

United States
Circuit Court of Appeals
For the Ninth Circuit.

9

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALEXANDER STUMPF, J. L. COATES, OLIE OLSON,
THEODORE BRIX, ZONE KIRKORIAN, D. ARKALIAN,
JAMES PROCTOR and EUGENE L. KENNEY,

Defendants.

J. L. COATES,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern
District of California, Northern Division.

FILED

MAR 22 1932

PAUL P. O'BRIEN,
CLERK

No.

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALEXANDER STUMPF, J. L. COATES, OLIE OLSON,
THEODORE BRIX, ZONE KIRKORIAN, D. ARKALIAN,
JAMES PROCTOR and EUGENE L. KENNEY,

Defendants.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Defendant and Appellant J. L. Coates:

DAVID E. PECKINPAH, Esq.,

Brix Building, Fresno, California.

For Plaintiff and Appellee:

SAMUEL W. McNABB, Esq.,

United States Attorney;

P. V. DAVIS, Esq.,

Assistant United States Attorney,

Federal Building, Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, NORTHERN
DIVISION.

UNITED STATES OF AMERICA,)	
	Plaintiff,)
vs.)
ALEXANDER STUMPF,	)	No. 1526-C-Cr.
J. L. COATES, OLIE OLSON,)	
THEODORE BRIX, ZONE KIR-	)	CITATION
KORIAN, D. ARKALIAN,)	
JAMES PROCTOR and)	
EUGENE L. KENNEY,)	
Defendants.)	

TO THE UNITED STATES OF AMERICA AND TO
HON. S. W. McNABB, UNITED STATES AT-
TORNEY, LOS ANGELES, CALIFORNIA,
GREETING:

You are hereby cited and admonished to be and appear
in the United States Circuit for the Ninth Circuit, at
San Francisco, California, within thirty days from the
date hereof, pursuant to an Order of this Court dated

today, allowing J. L. Coates, one of the defendants above named, to appeal from the verdict and judgment heretofore made and entered against him in the above entitled action, to show cause, if any there be, why the said verdict and judgment should not be corrected and why speedy justice should not be done to the parties in that behalf:

WITNESS the hand and seal of the Hon. Geo. Cosgrave, Judge of the United States District Court, above entitled, this 24th day of October, 1931.

Geo. Cosgrave
United States Judge

ATTEST:

R. S. ZIMMERMAN, Clerk

By Francis E. Cross

Deputy Clerk.

[Endorsed]: Copy Received Oct 24, 1931 P. V.
Davis, Asst U. S. Atty

Filed Oct 24 1931 R S Zimmerman, Clerk By Francis
E. Cross Deputy Clerk

INDICTMENT

No. 1528-C-CR.

Filed.....

Viol: Section 37 Federal Penal Code; Conspiracy to violate Sections 3 & 25, Title II, of the National Prohibition Act of October 28, 1919, and to vio Sections 3258 & 3281 Revised Statutes; and Sections 3 & 25, Title II, of the National Prohibition Act of October 28, 1919, as amended.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
NORTHERN DIVISION

At a stated term of said Court, begun and holden at the City of Fresno, County of Fresno, within and for the Northern Division of the Southern District of California, on the first Monday of April, in the year of our Lord one thousand nine hundred thirty-one:

The Grand Jurors for the United States of America, impaneled and sworn in the Northern Division of the Southern District of California, upon their oath present:

That

ALEXANDER STUMPF

J. L. COATES

OLIE OLSON

THEODORE BRIX, alias Ted Brix

ZONE KIRKORIAN

D. ARKALIAN

JAMES PROCTOR and EUGENE L. KENNEY,

hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom

is, other than as herein stated, to the Grand Jurors unknown, each late of the Northern Division of the Southern District of California heretofore, to-wit: continuously throughout the period of time from on or about the 1st day of September, 1930, and thereafter, to and including the date of finding and presenting this Indictment, in the County of Fresno, State of California, within the jurisdiction of the United States and of this Honorable Court, did then and there knowingly, wilfully, unlawfully, corruptly and feloniously conspire, combine, confederate, arrange and agree together and with each other and with divers other persons whose names are to the Grand Jurors unknown, to commit in the said County of Fresno, State, Division and District aforesaid, and within the jurisdiction of the United States and of this Honorable Court, an offense against the United States of America, and the laws thereof, the offense being to violate Title II, of an Act of Congress of the United States approved October 28, 1919, commonly known and designated as the National Prohibition Act, that is to say that they, the said defendants, would thereupon unlawfully, and in violation of Sections 3 & 25, Title II, of said Act, manufacture and possess apparatus intended and designed by the said defendants for the manufacture of intoxicating *liquor*, all of which should then and there be fit for beverage purposes and all of which should contain more than one-half of one per cent of alcohol by volume, none of said defendants then and there having nor intending to have a permit from the Director of Prohibition, Department of Justice, or the Commissioner of Industrial Alcohol, Treasury Department of the United States or any other

proper officer of the United States then and there authorized to issue such permits.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further charge and present that at the hereinafter stated times, in pursuance of and in furtherance of, in execution of, and for the purpose of carrying out and to effect the object, design and purpose of said conspiracy, combination and agreement aforesaid, the hereinafter named defendants did commit the following overt acts at the hereinafter stated places, within the State, Division and District aforesaid, and within the jurisdiction of the United States and of this Honorable Court;

1. Some time during the month of September, 1930, defendants Alexander Stumpf, Theodore Brix, alias Ted Brix, and co-conspirator G. H. Malter, met in Fresno, California, at the office of defendant Theodore Brix.

2. In the early part of September, 1930, defendant Theodore Brix, alias Ted Brix, introduced the defendant Alexander Stumpf to the co-conspirator G. H. Malter, in Fresno, California.

3. Some time during the month of September, 1930, defendant Theodore Brix, alias Ted Brix, and the co-conspirator G. H. Malter, met defendant Capt. Olson at Olson's ranch for the purpose of entering into a lease of the premises of Capt. Olson, on Winery and Shaw Avenues, in Fresno County, California.

4. During the latter part of September, 1930, J. S. Coates delivered to defendant Alexander Stumpf the sum of Five Hundred Dollars (\$500.00) at Fresno, California.

5. In the early part of November, 1930, the defendant Olie Olson constructed for said defendants a still on the premises belonging to co-conspirator G. H. Malter which

was later moved to the premises known as the Foss Ranch, of about 360 acres, located about 45 miles northeast of Fresno, County of Fresno, California.

6. During the month of December, 1930, G. Hata hauled certain vats from Fresno to the place where the still was located on the Foss Ranch, hereinabove described.

7. About the 1st day of January, 1930, Defendant Zone Kirkorian delivered a gas burner to the Foss Ranch to be used in connection with the still located on the said premises.

8. During the months of December and January, 1930, James Proctor assisted in the setting up of the still and was in charge of said still at the Foss Ranch above described.

9. About the 1st day of February, 1931, D. Arkalian solicited a sum of money from G. H. Malter at the City of Fresno, California.

10. On or about the 6th day of December, 1930, the defendant Alexander Stumpf purchased of and from one Howard N. Foss, a ranch containing 360 acres located about 45 miles northeast of the City of Fresno, County of Fresno, State of California.

All contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SECOND COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That ALEXANDER STUMPF, J. L. COATES, OLIE OLSON, THEODORE BRIX, alias Ted Brix, ZONE KIRKORIAN, D. ARKALIAN, JAMES PROCTOR, and EUGENE L. KENNEY,

hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom is, other than as herein stated, to the Grand Jurors unknown, each late of the Northern Division of the Southern District of California, heretofore, to-wit: on or about the 1st day of February, 1931, near Fresno, County of Fresno, State, Division and District aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully, unlawfully and feloniously have in their possession and custody and under their control, one still and distilling apparatus *apparatus* set up on the Foss Ranch, located about forty-five miles northeast of Fresno, Fresno County, California, none of said defendants then and there having, nor intending to have a permit from the Director of Prohibition, Department of Justice, or the Commissioner of Industrial Alcohol, Treasury Department of the United States or any other proper official of the United States then and there authorized to issue such permits for the possession, custody and control of said still and distilling apparatus; in violation of Section 3258 Revised Statutes of the United States;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

THIRD COUNT

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That Alexander Stumpf, J. L. Coates, Olie Olson, Theodore Brix, alias Ted Brix, Zone Kirkorian, D. Arkalian, James Proctor, Eugene L. Kenney,

hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom is, other than as herein stated, to the Grand Jurors unknown, each late of the Northern Division of the Southern District of California, heretofore, to-wit: on or about the 1st day of February, 1931, at the Foss Ranch, located about forty-five miles northeast of Fresno, Fresno County, California, in the Division and District aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully, unlawfully and feloniously engage in and carry on the business of distillers without having given bond, as required by law, with the intent on the part of them, the said defendants, to defraud the United States of America, of the tax on the spirits distilled by them, the said defendants; in violation of Section 3281 of the Revised Statutes;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

FOURTH COUNT

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That ALEXANDER STUMPF, J. L. COATES, OLIE OLSON, THEODORE BRIX, alias Ted Brix, ZONE KIRKORIAN, D. ARKALIAN, JAMES PROCUTOR, and EUGENE L. KENNEY,

hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom is,

other than as herein stated, to the Grand Jurors unknown, each late of the Northern Division of the Southern District of California, heretofore, to-wit; on or about the 1st day of February, 1931, near Fresno, County of Fresno, in the State, Division and District aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully and unlawfully have in their possession certain property and apparatus designed and intended by the said defendants for the manufacture of intoxicating liquor for beverage purposes, then and there containing alcohol in excess of one-half of one per cent by volume, which said property and apparatus is described as—Two (2) 5000-Gallon vats, One (1) 5-horse power boiler, Eight (8) 50-Gallon vats, One (1) mash pump, Twenty-five (25) gallons of mash, hose, pipe, valves and connections to still, and One (1) still complete; in violation of Section 25; Title II, of the National Prohibition Act of October 28, 1919;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Samuel W. McNabb

SAMUEL W. McNABB

United States Attorney

[Endorsed]: Filed Apr 22, 1931 R. S. Zimmerman,
Clerk By B. B. Hansen, Deputy Clerk

At a stated term, to wit: The April Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, California, on Wednesday, the 22nd day of April, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable PAUL J. McCORMICK, District Judge.

United States of America, Plaintiff,)	
)	
vs.)	
)	
Alexander Stumpf,	)	No. 1528-C-Crim.
J. L. Coates,)	
Olie Olson,)	
Theodore Brix, alias Ted Brix,)	
Zone Kirkorian,)	
D. Arkalian,)	
James Proctor, and)	
Eugene L. Kenney, Defendants,)	

An Indictment having been presented to the Court in this cause by the Foreman of the Grand Jury and ordered filed; upon motion of J. George Ohannesian, Assistant United States Attorney, appearing as counsel for the Government, it is by the Court ordered that the bond of defendant Proctor be fixed in the sum of \$500; that the bond of defendant Kenney be fixed in the sum of \$2000; that the bonds of defendants Arkalian and Olson be fixed in the sum of \$3500 each; that the bonds of defendants Brix, Coates, and Stumpf be fixed in the sum of \$5000 each; that defendant Kirkorian be released on his own recognizance; and that Bench Warrants issue for the apprehension of each of the said defendants except Kirkorian and Kenney.

At a stated term, to wit: The April Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, California, on Thursday, the 23rd day of April, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable PAUL J. McCORMICK, District Judge.

United States of America, Plaintiff,)	
)	
vs.	)	No. 1528-C-Crim.
)	
Alexander Stumpf, et al., Defendants,)	

This cause coming before the Court for arraignment and plea of defendant Alexander Stumpf, D. Arkalian, and Zone Kirkorian, J. Geo. Ohannesian, Assistant United States Attorney, appearing as counsel for the Government, and the defendants being present in court with their attorneys, F. W. Docker, Esq., appearing for defendant Stumpf; attorney Lindsay appearing for defendant Arkalian; and D. E. Peckinpah, Esq., appearing for defendant Kirkorian; waive reading of the Indictment, and, having thereupon stated their true names to be as given therein; it is by the Court ordered that this cause be continued to April 27, 1931, for entry of plea as to each of said defendants.

At a stated term, to wit: The April Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, California, on Monday, the 27th day of April, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable PAUL J. McCORMICK, District Judge.

United States of America, Plaintiff,)
)
vs.)
)
Alexander Stumpf, J. L. Coates, Olie)
Olson, alias Arthur Emil Olson,	) No. 1528-C-Crim.
Theodore Brix, alias Ted Brix, Zone)
Kirkorian, D. Arkalian, James Proc-)
tor, and Eugene L. Kenney,)
Defendants)

This cause coming before the Court for entry of plea as to each of defendants Alexander Stumpf, D. Arkalian, and Zone Kirkorian; and for arraignment and plea of defendants J. L. Coates, Arthur Emil Olson, Theodore Brix, and James Proctor; J. George Ohannesian, Assist-

ant United States Attorney, appearing as counsel for the Government; and all defendants being present in court with their attorneys, F. W. Docker, Esq., appearing for defendant Stumpf; D. E. Peckinpah, Esq., appearing for defendant Kirkorian; Arthur Allyn, Esq., appearing for defendant Olson; C. Lindsay, Esq., appearing for defendant Arkalian; Frank Curran and E. J. Fenston, Esqs., appearing for all the other defendants; defendants Coates, Olson, Brix and Proctor, each enters his separate plea of not guilty to each of the four counts of the Indictment; and thereafter, defendant Kenney having entered his plea of guilty to each of the four counts of the Indictment, defendant Stumpf enters his plea of guilty to the first and fourth counts and not guilty as to the second and third counts of the Indictment and defendant Arkalian having entered his plea of not guilty to each of the four counts of the Indictment; defendant Kirkorian enters his plea of guilty to the first count and not guilty as to the second, third, and fourth counts of the Indictment; whereupon it is by the Court ordered that this cause be continued to June 5, 1931, for setting for trial of all defendants on all counts to which pleas of not guilty have been entered and for pronouncement of sentence upon defendants on the counts to which pleas of guilty have been entered.

At a stated term, to wit: The April Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, California, on Friday, the 5th day of June, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable GEO. COSGRAVE, District Judge.

United States of America, Plaintiff,)	
)	
vs.)	
)	
Alexander Stumpf,)	
J. L. Coates,	)	No. 1528-C-Crim.
Arthur Emil Olson,)	
Theodore Brix,)	
Zone Kirkorian,)	
D. Arkalian,)	
James Proctor,)	
Eugene L. Kenney, Defendants,)	

This cause coming before the Court for setting for trial as to defendants J. L. Coates, Arthur Emil Olson, Theodore Brix, James Proctor, and D. Arkalian; for pronouncement of sentence upon defendant Alexander Stumpf on the first and fourth counts, and for setting for

trial on the second and third counts; for pronouncement of sentence upon defendant Kirkorian on the first count, and for setting for trial on all of the other counts; and, for pronouncement of sentence upon defendant Eugene L. Kenney on each of the four counts of the Indictment; H. G. Balter, Assistant United States Attorney, appearing as counsel for the Government, and all the said defendants being present in court, at this time, except defendants J. L. Coates and Theodore Brix; F. W. Docker, Esq., appearing for defendant Stumpf; N. Lindsay South appearing for J. L. Coates; Arthur Allyn, Esq., appearing for defendant Olson; Frank Curran appearing for Deft. Brix; C. Lindsay, Esq., appearing for defendant D. Arkalian; Attorney Green appearing for Zone Kirkorian; J. K. Reeder, Esq., is present in court as counsel for defendant Eugene Kenney; F. W. Docker, Esq., counsel for defendant Alexander Stumpf, moves the Court that sentence be imposed, at this time, also moves the Court for a reduction of bail, and the Court having thereupon denied said motions, H. G. Balter, Esq., suggests that sentence of the other defendants be continued until the date of trial; whereupon, it is by the Court ordered that this cause be set for October 6th, 1931, for trial, at Fresno, California, and that pronouncement of sentence upon the defendants will be made at that time.

At a stated term, to wit: The April Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, California, on Tuesday, the 6th day of October, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable GEO. COSGRAVE, District Judge.

United States of America, Plaintiff,)	
)	
vs.)	
)	
Alexander Stumpf,)	
J. L. Coates,	)	No. 1528-C-Crim.
Arthur Emil Olson,)	
Theodore Brix,)	
Zone Kirkorian,)	
D. Arkalian,)	
James Proctor,)	
Eugene L. Kenney,)	
	)	Defendants,

This cause coming on for trial of defendants J. L. Coates, Arthur Emil Olson, Theodore Brix, James Proctor, and D. Arkalian; for pronouncement of sentence upon defendant Alexander Stumpf on the first and fourth counts, and for setting on the second and third counts; for pronouncement of sentence upon defendant Kirkorian on the first count, and for setting for trial on all other counts; and, for pronouncement of sentence upon defendant Kenney on each of the four counts; upon motion of S. W. McNabb, United States Attorney, appearing for the Government, and Peter V. Davis, Assistant United States Attorney, also appearing for the Government, and

Samuel Rappaport being present as the official stenographic reporter of the testimony and the proceedings, it is ordered that the second and third counts as to defendant Stumpf be dismissed, that all counts as to defendant James Proctor be dismissed, and that all counts as to defendant Kirkorian, except the first count, be dismissed; whereupon, L. Lindsay South and H. A. Savage, Esqs., appearing for defendant Coates, L. L. South, Esq., moves the Court for a continuance and Laurence Myers, Esq., appearing for defendant Olson having thereupon moved the court for a continuance of one week, only; Frank Curran and E. J. Fenston. Esqs., appearing for defendant Brix only move the court for a continuance, and thereafter, C. E. Lindsay, Esq., appearing for defendant D. Arkalian, having moved the Court for a continuance, S. W. McNabb, Esq., opposes a continuance, and the Court having thereupon denied said motions for a continuance, F. W. Docker, Esq., appearing for defendant Stumpf, and D. E. Peckinpah, Esq., appearing for defendant Kirkorian; now, at the hour of 10:22 o'clock a.m., it is ordered that a jury be impanelled herein; whereupon, twelve (12) names are drawn from the jury box, being as follows, to-wit:

J. C. Straube, A. Olson, Early B. Calhoun, W. L. Kennedy, Geo. Larsen, James P. Gregory, Allen Jordan, C. C. Cartwright, Wilson I. Compton, Jr., John W. Macy, Leon Akey, and W. E. Toms.

The twelve (12) jurors whose names were drawn from the jury box are called and are examined for cause by the Court, by S. W. McNabb, H. J. Savage, and Frank Curran, Esqs., respectively, and

Early B. Calhoun is thereupon excused by the Court for cause; whereupon, it is ordered that one more name

be drawn from the jury box, and the name of John L. O'Brien is called and is examined for cause by the Court, and by Frank Curran and S. W. McNabb, Esqs., respectively, and is passed for cause.

George Larsen is now excused by the Court for cause, and the Court having thereupon ordered that one more name be drawn from the jury box, the name of Conrad M. Warner is drawn therefrom; the said Conrad M. Warner is called and is examined for cause by the Court, and is thereupon excused for cause by the Court; whereupon, it is ordered that one more name be drawn from the jury box, and the name of Revere P. Fisher is drawn therefrom; the said Revere P. Fisher is called and is examined for cause by the Court and Frank Curran, Esq., respectively, and the said Revere P. Fisher having thereupon been passed for cause, is excused by the Court on the plaintiff's peremptory challenge; and thereafter, the Court having ordered that one more name be drawn from the jury box, the name of C. Roy McKeon is drawn therefrom; the said C. Roy McKeon is called and is examined for cause by the Court and S. W. McNabb, Esq., respectively, and is thereupon passed for cause.

A. Olson and W. L. Kennedy are excused by the Court on the defendant's peremptory challenge, and the Court having thereupon ordered that two more names be drawn from the jury box, the names of John S. McCain and John D. Magill are drawn therefrom; the said prospective jurors are called and are examined for cause by the Court, and S. W. McNabb, Esq., respectively, and thereafter, said prospective jurors having passed for cause, John S. McCain is excused by the Court on the plaintiff's peremptory challenge; whereupon, it is ordered that one

more name be drawn from the jury box, and the name of R. E. Dunkle is drawn therefrom; the said R. E. Dunkle is called and is examined for cause by the Court and S. W. McNabb, Esq., respectively, and said prospective juror having thereupon been passed for cause, is excused by the Court on the defendant's peremptory challenge; and thereafter, the Court having ordered that two more names be drawn from the jury box, the names of Wm. H. Sutter and Anders P. Eskilsen are drawn therefrom; the said Wm. H. Sutter and Anders P. Eskilsen are called and are examined for cause by the Court and by S. W. McNabb and Frank Curran, Esqs., respectively, and are thereupon passed for cause.

Leon Akey is excused by the Court on the defendant's peremptory challenge, and the Court having thereupon ordered that one more name be drawn from the jury box, the name of T. J. Williams is drawn therefrom; the said T. J. Williams is called.

At the hour of 11:13 o'clock a.m., the Court declares a five-minute recess, following which, at the hour of 11:24 O'clock a.m., court reconvenes, and all appearing as before, said prospective juror T. J. Williams is examined for cause by the Court, and by S. W. McNabb and Frank Curran, Esqs., respectively, and is thereupon passed for cause.

Allen Jordan is now excused by the Court on the plaintiff's peremptory challenge; and thereafter, the Court having ordered that one more name be drawn from the jury box, the name of Lewis M. Ballard is drawn therefrom; whereupon, prospective juror T. J. Williams is challenged for cause by S. W. McNabb, Esq., and is thereupon excused by the Court on the plaintiff's challenge

for cause, and thereafter, W. E. Toms having been excused on the defendant's peremptory challenge, and the Court having thereupon ordered that two more names be drawn from the jury box, the names of Adolph Buttner and Sanford C. Enos are drawn therefrom; the said prospective jurors are called and are examined for cause by the Court and S. W. McNabb, Esq., respectively; and thereafter, Adolph Buttner having been passed for cause, W. H. Sutter is now excused on the defendant's peremptory challenge; whereupon, it is ordered that one more name be drawn from the jury box, and the name of Albert Chaddock is drawn therefrom; the said Albert Chaddock is called and is examined for cause by the Court, and by S. W. McNabb and Frank Curran, Esqs., respectively, and the Court having thereupon excused Sanford C. Enos for cause, it is ordered that one more name be drawn from the jury box, the name of George Depter Smith is thereupon drawn therefrom; the said prospective juror is called and is examined for cause by the Court, and by S. W. McNabb and H. J. Savage, Esqs., respectively, and is passed for cause; whereupon, Albert Chaddock is excused for cause by the Court, and thereafter,

Wilson C. Compton, Jr. and C. C. Cartwright are excused by the Court on the plaintiff's and defendant's peremptory challenges, respectively, and John D. Magill and Lewis M. Ballard are also thereupon excused by the Court on the defendant's and the plaintiff's peremptory challenges, respectively, following which, George Depter Smith is excused on the defendant's peremptory challenge.

At the hour of 12:03 o'clock p.m., the Court admonished the seven tentative jurors in the jury box that during the progress of this trial, they are not to speak to anyone

about this cause, or any matter or thing therewith connected; that until said cause is finally submitted to them for their deliberation under the instructions of the Court, they are not to speak to each other about this cause, or any matter or thing therewith connected, or form or express any opinion concerning the merits of the trial until it is finally submitted to them, and orders that a Special Venire issue for twelve (12) veniremen returnable at the hour of 2 o'clock p.m.; the seven tentative jurors now in the jury box, being as follows, to-wit:

THE JURY

J. C. Straube	John W. Macy
Adolph Buttner	Anders P. Eskilsen
John L. O'Brien	James P. Gregory
C. Roy McKeon	

and the Court thereupon declares a recess to the hour of 2 o'clock p.m., today.

At the hour of 2:15 o'clock p.m., court reconvenes, and all being present as before, including the seven tentative petit jurors impanelled from the regular venire, Sidney J. Shannon, Deputy United States Marshal, makes his return on the Special Venire, as follows, to-wit:

Fresno, Oct. 6/31.

Returned served, City of Fresno, the following special venire:

Leon Hart, Tom Sand, A. M. King, Melvin Fredericks, H. C. Wilson, C. H. Staples, J. H. Stahl, S. L. Riddell, O. P. Bledsoe, Joe Jones, Jas. J. Senior, James Wainscoat.

A. C. Sittel, U. S. Marshal,
S. J. Shannon,
Deputy.

The names of the twelve (12) petit jury veniremen on the Special Venire issued today and returnable today are called and all having answered present, the said twelve veniremen are sworn on voir dire and as to attendance and travel, and are thereupon given the second oath to answer questions in this case, and they having been questioned by the Court, and the said twelve names having been placed in the jury box, it is ordered that five names be drawn therefrom, and the names of S. L. Riddell, James Wainscoat, C. H. Staples, J. H. Stahl, and H. C. Wilson having thereupon been drawn from the jury box, the said prospective jurors are called and are examined for cause by S. W. McNabb and Frank Curran, Esqs., respectively; and thereafter, James Wainscoat and C. H. Staples having been passed for cause, S. L. Riddell is examined by L. Lindsay South, Esq., the said S. L. Riddell and J. H. Stahl are thereupon excused by the Court for cause, and it is ordered that two more names be drawn from the jury box, and the names of O. P. Bledsoe and Tom Sand having thereupon been drawn therefrom; the said prospective jurors are called and are examined for cause by the Court, and by S. W. McNabb and Frank Curran, Esqs., respectively, and H. J. Savage, Esq., having examined prospective juror Tom Sand for cause, said jurors are thereupon passed for cause.

H. C. Wilson is excused by the Court on the defendant's peremptory challenge, and the Court having thereupon ordered that one more name be drawn from the jury box, the name of James J. Senior is drawn therefrom; the said James J. Senior is called and is examined for cause by the Court, and by S. W. McNabb and Frank Curran, Esqs., respectively, and said prospective juror

having been passed for cause, is excused by the Court on the plaintiff's peremptory challenge; and thereafter, the Court having ordered that one more name be drawn from the jury box, the name of Leon Hart is called and is examined for cause by the Court, and is excused by the Court for cause; whereupon, it is ordered that one more name be drawn from the jury box, and the name of Joe Jones having thereupon been drawn therefrom; the said Joe Jones is called and is examined for cause by the Court and S. W. McNabb, Esq., respectively, and is thereupon passed for cause.

The twelve (12) jurors whose names were drawn from the jury box are accepted and sworn in a body as the jury to try this cause; the names of those so sworn, being as follows, to-wit:

THE JURY

J. C. Straube,	James Wainscoat,
Adolph Buttner,	C. H. Staples,
John L. O'Brien,	Tom Sand,
O. P. Bledsoe,	John W. Macy,
C. Roy McKeon,	Anders P. Eskilsen
James P. Gregory,	Joe Jones

At the hour of 3:24 o'clock p.m., the Court admonishes the jury that during the progress of this trial, they are not to speak to anyone about this cause, or any matter or thing therewith connected; that until said cause is finally submitted to them for their deliberation under the instructions of the Court, they are not to speak to each other about this cause, or any matter or thing therewith connected, or form or express any opinion concerning the merits of this trial until it is finally submitted to them, and declares a recess for a period of ten minutes.

At the hour of 3:38 o'clock p.m., court reconvenes, and all being present as before, including the jury, S. W. McNabb, Esq., makes a statement to the jury, and at the request of Frank Curran, Esq., all witnesses are instructed to leave the court-room, except at the request of S. W. McNabb, Esq., Government Agents Whitfield, Clements and Stribling, chemist, are permitted to remain in the courtroom; whereupon, C. E. Lindsay, Esq., moves the Court to dismiss as to defendant Arkalian which is denied by the Court.

At the hour of 4:10 o'clock p.m., Frank Curran, Esq., makes opening statement to the jury in behalf of defendant Brix, and

At the hour of 4:17 o'clock p.m., H. A. Savage, Esq., having thereupon made opening statement to the jury in behalf of defendant Coates.

At the hour of 4:22 o'clock p.m., C. E. Lindsay, Esq., makes opening statement to the jury, and

Alexander Stumpf is thereupon called and sworn and testifies for the Government on direct examination conducted by S. W. McNabb, Esq., and the following exhibits are thereupon offered and marked for Identification for the Government, to-wit:

U. S. EX. NO. 1 for Ident.:	Column—
“ “ “ “ 2 “ “	Condenser
“ “ “ “ 3 “ “	Base

At the hour of 5:05 o'clock p.m., the Court reminds the jury to remember the admonition heretofore given herein, and declares a recess to the hour of 10 o'clock a.m., tomorrow.

At a stated term, to wit: The April Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, California, on Wednesday, the 7th day of October, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable GEO. COSGRAVE, District Judge.

United States of America, Plaintiff,)	
)	
)	
)	
vs.)	
Alexander Stumpf,)	
J. L. Coates,	)	No. 1528-C-Crim.
Arthur Emil Olson,)	
Theodore Brix,)	
Zone Kirkorian,)	
D. Arkalian,)	
James Proctor,)	
Eugene L. Kenney, Defendants,)	

This cause coming on for further trial of defendants J. L. Coates, Arthur Emil Olson, Theodore Brix, and D. Arkalian, and for pronouncement of sentence upon defendant Alexander Stumpf on counts one and four; on defendant Zone Kirkorian on the first count, and on Eugene L. Kenney as to all counts; S. W. McNabb, United States Attorney, and P. V. Davis, Assistant United States Attorney, appearing for the Government; defendant Coates being present with his attorneys, L. Lindsay South and H. A. Savage, Esqs.; defendant Olson being present with his attorney, Lawrence Myers, Esq.; defendant Brix being present with his attorneys, Frank

Curran and E. J. Fenston, Esqs.; defendant Arkalian being present with his attorney, C. E. Lindsay, Esq.; defendant Stumpf being present in court, in propria persona; and C. R. Triay and Samuel Rappaport being present and alternating as the official stenographic reporters of the testimony and the proceedings; now, at the hour of 10:10 o'clock a.m., court reconvenes in this case, and all being present, including the jury, it is ordered that this trial be proceeded with; whereupon, defendant Alexander Stumpf, heretofore sworn, resumes the witness stand, testifies further on an examination conducted by S. W. McNabb, Esq., and the following exhibit is thereupon offered and marked for Identification for the Government, to-wit:

U. S. EX. NO. 4 for Ident.: Yellow Card, Hotel
Plaza, etc.

and the following exhibit having thereupon been offered and admitted in evidence for the Government, to-wit:

U. S. EX. NO. 5: Deposit Receipt dated 12/6/30 sgd.
by Alexander Stumpf

At the hour of 11:03 o'clock a.m., the Court reminds the jury to observe the admonition heretofore given herein, and declares a ten-minute recess.

At the hour of 11:18 o'clock a.m., court reconvenes, and all being present as before, witness Stumpf is temporarily withdrawn from the witness stand by permission of the Court.

Erwin Frane is thereupon called and sworn and testifies for the Government on direct examination conducted by S. W. McNabb, Esq., and said witness having thereupon testified on cross-examination conducted by C. E. Lind-

say, H. A. Savage, and Frank Curran, Esqs., respectively, now testifies on an examination conducted by the Court, and on cross-examination conducted by C. E. Lindsay, Esq.

At the hour of 12:08 o'clock p.m., the Court reminds the jury to observe the admonition heretofore given herein, and declares a recess until the hour of 2 o'clock p.m., today.

At the hour of 2:02 o'clock p.m., court reconvenes, and all being present as before, including the jury, it is ordered that this trial be proceeded with; whereupon,

Howard M. Foss is called and sworn and testifies for the Government on direct examination conducted by S. W. McNabb, Esq.; and thereafter, said witness having testified on cross-examinations conducted by H. A. Savage, Frank Curran, and C. E. Lindsay, Esqs., respectively, now testifies on redirect examination conducted by S. W. McNabb, Esq.

At the hour of 2:22 o'clock p.m., defendant Alexander Stumpf resumes the witness stand and testifies on further direct examination conducted by S. W. McNabb, Esq., and the defendant having thereupon been examined by the Court,

At the hour of 3 o'clock p.m., the Court reminds the jury to observe the admonition heretofore given herein, and declares a ten-minute recess.

At the hour of 3:14 o'clock p.m., court reconvenes, and all being present as before, including the jury, defendant Stumpf resumes the witness stand and testifies on cross-examination conducted by Frank Curran, Esq., and on examination conducted by the Court; whereupon, the fol-

lowing exhibit is offered and marked for Identification for the defendant, to-wit:

Defendant's Ex. A for Ident.: Label—St. George
S h e r r y Bitters—
Grape Concentrate,

At the hour of 5:02 o'clock p.m., the Court reminds the jury to observe the admonition heretofore given herein, and declares a recess until the hour of 10 o'clock a.m., tomorrow.

At a stated term, to wit: The April Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, California, on Thursday, the 8th day of October, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable GEO. COSGRAVE, District Judge.

United States of America, Plaintiff,)	
)	
vs.	)	No. 1528-C-Crim.
)	
Alexander Stumpf, et al., Defendants,)	

Court reconvenes in this cause at the hour of 10:02 o'clock a.m., for further trial of defendants Coates, Olson, Brix, and Arkalian, and all being present as before, including the jury, it is ordered that this trial be proceeded with; whereupon, witness Alexander Stumpf resumes the witness stand and testifies on cross-examination conducted

by Frank Curran, Esq., and the following exhibit having thereupon been offered and admitted in evidence for defendant Brix, to-wit:

Defendant Brix's Ex. B: Promissory note for \$150
dated 8/13/30, sgd. by
Alex Stumpf and Marie
Stumpf in favor of Theo.
F. Brix.

witness Stumpf testifies on cross-examination conducted by H. A. Savage, Esq.

At the hour of 11:05 o'clock a.m., the Court reminds the jury to observe the admonition heretofore given herein, and declares a ten-minute recess.

At the hour of 11:18 o'clock a.m., court reconvenes, and all being present as before, except defendant Olson, witness Stumpf resumes the witness stand and testifies on further cross-examination conducted by H. A. Savage, Esq., and defendant Olson having thereupon come into court at the hour of 11:27 o'clock a.m., makes a statement re his absence, and said defendant Olson being represented by Frank Curran, Esq., pro tem. waives the benefit of any irregularity in the proceedings by reason of his absence, and is thereupon admonished by the Court to be present hereafter; whereupon, said witness Stumpf testifies on cross-examination conducted by H. A. Savage, Esq., and the following exhibit is thereupon offered, having been heretofore marked for Identification, and admitted for the Government, to-wit:

U. S. EX. NO. 4: Yellow card—Hotel Plaza.
said witness Stumpf having thereupon been examined by S. W. McNabb, Esq., now testifies on further cross-examination conducted by H. A. Savage, Esq., and

At the hour of 12:12 o'clock p.m., the Court reminds the jury of the admonition heretofore given herein, and declares a recess until the hour of 2:00 o'clock p.m., today.

At the hour of 2:03 o'clock p.m., court reconvenes, and all being present as before, witness Alexander Stumpf resumes the witness stand and is cross-examined by C. E. Lindsay, Esq., and said witness having thereupon testified on redirect examination conducted by S. W. McNabb, Esq., now testifies on an examination conducted by the Court; and thereafter, said witness having testified on redirect examination and on recross-examination conducted by S. W. McNabb and Frank Curran, Esqs., respectively, now testifies on re-cross examination conducted by C. E. Lindsay, Esq.

At the hour of 3:32 o'clock p.m., the Court declares a ten-minute recess.

At the hour of 3:43 o'clock p.m., court reconvenes, and all being present as before, including the jury,

A. J. Olson is called and sworn and testifies for the Government on direct examination conducted by P. V. Davis, Esq., and said witness having thereupon testified on cross-examination conducted by Frank Curran and C. E. Lindsay, Esqs., respectively, now testifies on an examination conducted by the Court; and thereafter, said witness having testified on redirect examination and on recross-examination conducted by S. W. McNabb and C. E. Lindsay, Esqs., respectively, now testifies on cross-examination, and on recross-examination conducted by C. L. South and C. E. Lindsay, Esqs., respectively; whereupon, said witness testifies on redirect examination and on recross-examination conducted by P. V. Davis and C. E.

Lindsay, Esqs., respectively, and is thereupon recross-examined by Frank Curran, Esq.

E. Pusey Cain is called and sworn and testifies for the Government on direct examination conducted by S. W. McNabb, Esq., and said witness having thereupon testified on cross-examination conducted by H. A. Savage and F. Curran, Esqs., respectively, now testifies on redirect examination conducted by S. W. McNabb, Esq.; whereupon,

Wilbert G. Whitfield is called and sworn and testifies for the Government on direct examination conducted by P. V. Davis, Esq., and is thereupon cross-examined by C. E. Lindsay, H. A. Savage, and C. E. Lindsay, Esqs., respectively, and the following exhibit having thereupon been offered and admitted in evidence for the Government, to-wit:

U. S. EX. NO. 6: Half-gallon glass demijohn full of mash.

Fred D. Stribling, chemist, is called and sworn and testifies for the Government on direct examination conducted by P. V. Davis, Esq.; and thereafter, said witness having testified on cross-examination conducted by F. Curran and C. E. Lindsay, Esqs., respectively,

At the hour of 5:08 o'clock p m., the Court reminds the jury of the admonition and excuses said jury until the hour of 10 o'clock a.m., tomorrow, and in their absence, all others being present, the Court makes a statement to Frank Curran, Esq., relative to his decorum to which Frank Curran, Esq., makes a statement to the Court in his own behalf; whereupon, the said Frank Curran, Esq., is adjudged guilty of Contempt of Court, and fined \$20.

At the hour of 5:15 o'clock p.m., the Court declares a recess until the hour of 10 o'clock a.m., tomorrow.

At a stated term, to wit: The April Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, California on Friday, the 9th day of October, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable GEO. COSGRAVE, District Judge.

United States of America, Plaintiff,)	
)	
vs.	)	No. 1528-C-Crim.
)	
Alexander Stumpf, et al., Defendants,)	

Court reconvenes in this cause at the hour of 10:02 o'clock a.m., for further trial of defendants Coates, Olson, Brix, and Arkalian, and all being present as before, including the jury, C. R. Triay and Samuel Rappaport being present as the official stenographic reporters of the testimony and the proceedings, it is ordered that this trial be proceeded with; whereupon,

Ferdinand Andreas is called and sworn and testifies for the Government on direct examination conducted by S. W. McNabb, Esq., counsel for the Government, and said witness having thereupon testified on cross-examination conducted by H. A. Savage, Esq., now testifies on a redirect examination and an examination conducted by S. W. McNabb, Esq., and the Court, respectively; and thereafter,

W. G. Walsh is called and sworn and testifies for the Government on direct examination conducted by S. W.

McNabb, Esq., and the following exhibit having thereupon been offered and admitted in evidence for the Government, to-wit:

U. S. EX. NO. 7: Conditional Sales Contract 9/26/30
sgd. by F. L. G. Andreas for Chevrolet Auto, and pink slip attached,
name of F. L. G. Andreas

said witness testifies on cross-examination and on redirect examination conducted by H. A. Savage and S. W. McNabb, Esqs., respectively.

Arnold C. Franzke is now called and sworn and testifies for the Government on direct examination conducted by S. W. McNabb, Esq.; and thereafter, said witness having testified on cross-examination conducted by C. A. Lindsay, Esq., said witness testifies on redirect examination conducted by S. W. McNabb, Esq.

At the hour of 11 o'clock a.m., the Court reminds the jury to observe the admonition heretofore given herein, and declares a ten-minute recess.

At the hour of 11:13 o'clock a.m., court reconvenes, and all being present, as before,

E. L. Kenney is called and sworn and testifies for the Government on direct examination conducted by S. W. McNabb, Esq., and U. S. Exhibits Nos. 1, 2, and 3, heretofore marked for Identification, portions of still, are now admitted in evidence, and said witness Kenney having thereupon testified further on an examination conducted by S. W. McNabb, Esq.,

At the hour of 11:59 o'clock a.m., the Court reminds the jury of the admonition heretofore given herein, and declares a recess until the hour of 1:30 o'clock p.m., today.

At the hour of 1:30 o'clock p.m., court reconvenes, and all being present as before, J. E. Fenston, Esq., being now present,

W. G. Phillips is called out of order at the request of H. A. Savage, Esq., and testifies for the defendants on direct examination conducted by H. A. Savage, Esq.; whereupon, said witness testifies on cross-examination conducted by S. W. McNabb, Esq.

E. L. Kenney, heretofore sworn, resumes the witness stand and testifies on cross-examination conducted by C. E. Lindsay, Esq., and said witness having thereupon testified on cross-examination conducted by H. A. Savage, Esq., now testifies on an examination conducted by the Court, and is thereupon cross-examined by H. A. Savage, Esq.

James Proctor is called and sworn and testifies for the Government on direct examination conducted by P. V. Davis, Esq., counsel for the Government, and

At the hour of 2:28 o'clock p.m., the Court reminds the jury of the admonition heretofore given herein, and declares a recess for a period of eight minutes.

At the hour of 2:38 o'clock p.m., court reconvenes, and all being present as before, James Proctor resumes the witness stand and testifies further on an examination conducted by P. V. Davis, Esq.; and thereafter, said witness having testified on cross-examination conducted by Frank Curran and H. A. Savage, Esqs., respectively, now testifies on redirect examination conducted by S. W. McNabb, Esq.

Francis Morin is called out of order at the request of H. A. Savage, Esq., and testifies on direct examination conducted by H. A. Savage, Esq. as a witness for the

defendants, and is thereupon cross-examined by S. W. McNabb, Esq.

Walter G. Kerr is called and sworn and testifies for the Government on direct examination conducted by S. W. McNabb, Esq.

At the hour of 3:40 o'clock p.m., the Court declares a recess for a period of eight minutes.

At the hour of 3:50 o'clock p.m., court reconvenes, and all being present as before, witness Walter G. Kerr resumes the witness stand and testifies on cross-examination conducted by H. A. Savage, Esq.; whereupon, said witness testifies on cross-examination conducted by Frank Curran and S. W. McNabb, Esqs., respectively.

George Hugo Malter is called and sworn, and H. A. Savage and C. E. Lindsay, Esqs., having thereupon requested that this witness be excluded from testifying on the ground that he has read portion of the transcript of the testimony of witness Stumpf when witnesses were excluded from the courtroom, and both counsel having argued in support of said motion, Frank Curran, Esq., also joins in said motion for defendants Brix and Olson; and thereafter, S. W. McNabb and P. V. Davis, Esqs., having made statements, respectively, in opposition to said motion, the Court makes a statement, and P. V. Davis, Esq., having thereupon made a statement, witness Malter is temporarily withdrawn, at this time.

Wilbert G. Whitfield, heretofore sworn, resumes the witness stand and testifies on direct examination conducted by S. W. McNabb, Esq.; and thereafter, said witness having testified on an examination on voir dire by Frank Curran, Esq., the following exhibit is offered and admitted in evidence for the Government, to-wit:

U. S. EX. NO. 8: 5-page typewritten statement signed
by A. E. Olson.

At the hour of 5:01 o'clock p.m., the Court reminds the jury of the admonition heretofore given herein, and declares a recess until the hour of 9:30 o'clock a. m., tomorrow.

At a stated term, to wit: The April Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, California, on Saturday, the 10th day of October, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable GEO. COSGRAVE, District Judge.

United States of America, Plaintiff,)	
)	
vs.	)	No. 1528-C-Crim.
)	
Alexander Stumpf, et al., Defendants,)	

Court reconvenes in this cause at the hour of 9:35 o'clock a.m., for further trial of defendants Coates, Olson, Brix, and Arkalian, and all being present as before, including the jury, Frank Curran, Esq., moves to strike certain testimony of Alexander Stumpf which motion is denied and an exception noted; whereupon, witness Wilbert C. Whitfield resumes the witness stand and testifies further on direct examination conducted by S. W. McNabb, United States Attorney, and said witness having

thereupon testified on cross-examination conducted by Frank Curran, H. A. Savage, and C. E. Lindsay, Esqs., respectively, now testifies on redirect examination and cross-examination conducted by S. W. McNabb and Frank Curran, Esqs., respectively, whereupon, said witness testifies on redirect examination and on recross-examination conducted by S. W. McNabb and Frank Curran, Esqs., respectively; and thereafter, said witness having testified on cross-examinations conducted by H. A. Savage and C. E. Lindsay, Esqs., respectively, now testifies on redirect examination conducted by S. W. McNabb, Esq.

George Hugo Malter, heretofore sworn, resumes the witness stand, and objections to said witness testifying having thereupon been overruled, said witness now testifies on direct examination conducted by P. V. Davis, Esq.

At the hour of 10:52 o'clock a.m., the Court admonishes the jury and declares a recess for a period of ten minutes.

At the hour of 11:05 o'clock a.m., court reconvenes, and all being present as before, witness George Hugo Malter resumes the witness stand and testifies further on an examination conducted by P. V. Davis, Esq.

At the hour of 12:16 o'clock p.m., the Court admonishes the jury and declares a recess in this cause until next Tuesday, October 13th, 9:30 o'clock a.m., and a recess generally until next Monday, October 12th, 1931, 10:00 o'clock a.m.

At a stated term, to wit: The October Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, California, on Tuesday, the 13th day of October, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable GEO. COSGRAVE, District Judge.

United States of America, Plaintiff,)	
)	
vs.	)	No. 1528-C-Crim.
)	
Alexander Stumpf, et al., Defendants,)	

This cause came on for further trial of the following named defendants, all of whom are present and represented by counsel as hereinafter indicated: PRESENT: S. W. McNabb, U. S. Attorney, and P. V. Davis, Assistant U. S. Attorney; L. L. South and H. A. Savage, Esqs., for J. L. Coates; F. Curran, Esq., for A. E. Olson; F. Curran and E. J. Fenston, Esqs., for T. Brix; and C. E. Lindsay, Esq., for D. Arkalian; S. Rappaport and C. R. Triay, court reporters; and the jury.

George Hugo Malter, heretofore sworn, resumes the stand and is further examined on direct by P. V. Davis, Esq., and is cross-examined by Attorney Curran.

The jury being reminded of their admonition, recess is declared at 11:22 a.m., for seven minutes.

At 11:30 court reconvenes and, all present,

Witness Malter resumes his testimony on cross-examination by Attorney Curran; is further cross-examined by

Attorneys Lindsay and Savage; and is questioned by the court. At 12 noon, the jury is reminded of admonition, and recess is declared until 1:30 p. m. Court reconvenes at 1:35 p.m., and, all present,

Witness Malter resumes his testimony on cross-examination by Attorney Savage; is examined on redirect by Attorney Davis; recross-examined by Attorney Curran; examined by the Court; cross-examined by Attorneys Lindsay and Savage. A ten-minute recess is declared, court reconvening at 3:10 p.m., and, all present,

Witness Malter is further cross-examined by Attorney Savage,

Defendant (Coates) Ex. C: 4 checks on Bank of Italy, all to order of cash, all signed G. H. Malter: 10/3/30-\$600, 10/24/30-\$200, 9/18/30-\$500, and 9/25/30-\$500.

being admitted in connection with this testimony. Witness Malter is further cross-examined by Attorney Curran.

The Government rests.

E. A. Nichols, for defendants, is called and sworn and testifies on direct examination by Attorney Curran, is cross-examined by Attorney McNabb, questioned by the court, recross-examined by Attorney McNabb, and further examinations are conducted by Attorneys Savage, Lindsay, McNabb, and by the Court.

Defendants Brix and Arkalian rest.

W. D. Coates, Jr., for defendants, is called and sworn and testified on direct examination by Attorney Savage; is cross-examined by Attorney Davis.

Mrs. Edna Pearl Coates and N. Lindsay South, Esq., for defendants, are in turn called and sworn and testify on direct examination by Attorney Savage and are cross-examined by Attorney McNabb.

At 3:58 p.m. recess for ten minutes is declared; court reconvenes at 4:07.

J. L. Broad, for defendants, is called and sworn and testifies on direct examination by Attorney Savage; is cross-examined by Attorney McNabb.

Defendant Olson rests.

At 4:12 pm the jury is admonished and recess is declared until 9:30 a.m., tomorrow.

At a stated term, to wit: The October Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, California, on Wednesday, the 14th day of October, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable GEO. COSGRAVE, District Judge.

United States of America, Plaintiff,)	
vs.)	
Alexander Stumpf, et al., Defendants,)	1528-C-Crim

This cause came on for further trial of the following-named four defendants, S. W. McNabb, U. S. Attorney, and P. V. Davis, Assistant U. S. Attorney, appearing for

the Government; L. L. South and H. A. Savage, Esqs., for defendant Coates, Curran (pro tem.) for Olson, F. Curran and E. J. Fenston, Esqs., for Brix, C. E. Lindsay for Arkalian; S. Rappaport and C. R. Triay, reporters; the jury; all present.

At 9:35 a.m., court reconvenes.

Attorneys McNabb and Savage stipulate as to the nature of Dr. Ray's testimony, if he should testify.

Defendant Coates rests, the others on trial having heretofore rested.

Argument is limited to two hours on each side.

Attorneys Savage and Lindsay move the court to instruct the jury to bring in a verdict of not guilty for their respective clients, Coates and Arkalian.

Attorney McNabb moves that the second, third, and fourth counts, as to Brix only, be dismissed.

The motions of Attorneys Savage and Lindsay are denied; motion of Attorney McNabb is granted.

P. V. Davis, Assistant U. S. Attorney, argues to the jury.

At 10:48 a ten minute recess is declared, court reconvening at 11:02 a.m., all present.

Attorney Lindsay argues to the jury for Arkalian.

At 11:38 a.m. the jury being admonished, recess is declared until 1:30 p.m.

At 1:33 p.m., court reconvenes, all present.

Attorney Curran argues to the jury for Brix and Olson.

Savage argues to the Court for Coates.

At 2:58 p.m. a ten-minute recess is declared, the jury having been admonished.

At 3:08 p.m. court reconvenes, all present.

Attorney McNabb argues for the Government.

The court instructs the jury on the law herein.

There are no exceptions to charge.

At 4:48 p.m. S. J. Shannon, sworn as bailiff, retires with the jury for its deliberation, and recess is declared until the return of the jury.

At 6 p.m. it is ordered that the jury be taken to dinner in the custody of said bailiff and at Government expense.

At 7:48 p.m., the jury return and deliberate further.

At 11:40 p.m. it is ordered that the jury be taken to the Fresno Hotel for the night in the custody of said bailiff and at Government expense; that it likewise be taken to breakfast; and that it thereafter be returned to the jury room tomorrow morning for further deliberation. The jury leaves the court house at 12 midnight and arrive at the Fresno Hotel at 12:20 a.m., October 15, 1931.

At a stated term, to wit: The October Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, California, on Thursday, the 15th day of October, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable GEO. COSGRAVE, District Judge.
United States of America, Plaintiff,)

vs.)

1528-C-Crim.)

Alexander Stumpf, et al., Defendants,)

This cause came on for further trial of the following four defendants, all of whom are present with counsel as indicated: PRESENT: P. V. Davis, Assistant U. S. Attorney; L. L. South, Esq., for Coates; F. Curran, Esq.,

for Brix and Olson; C. E. Lindsay, Esq. for Arkalian. S. Rappaport, reporter.

The jury, in the custody of Deputy Marshal S. J. Shannon, having left the post office building at 12 last midnight and arrived at the Fresno Hotel, Fresno, at 12:20 a.m. and breakfasted at 6:40 a.m. at Government expense, they return to the jury room at 7:40 and deliberate further upon a verdict.

At 9:44 a.m. court reconvenes, and, all present, the following verdict is read and ordered filed:

We, the jury in the above entitled case, find the defendant

J. L. COATES:

GUILTY as charged in the first count of the Indictment;

NOT GUILTY as charged in the second count of the Indictment;

NOT GUILTY as charged in the third count of the Indictment;

GUILTY as charged in the fourth count of the Indictment;

ARTHUR EMIL OLSON (charged as Olie Olson):

GUILTY as charged in the first count of the Indictment;

NOT GUILTY as charged in the second count of the Indictment;

NOT GUILTY as charged in the third count of the Indictment;

NOT GUILTY as charged in the fourth count of the Indictment;

THEODORE BRIX

NOT GUILTY as charged in the first count of the Indictment;

D. ARKALIAN

GUILTY as charged in the first count of the Indictment;

GUILTY as charged in the second count of the Indictment;

NOT GUILTY as charged in the third count of the Indictment;

GUILTY as charged in the fourth count of the Indictment.

Dated: Fresno, California, October 15th, 1931.

C. ROY McKEON

Foreman.

FILED OCT 15 1931

R. S. ZIMMERMAN, Clerk, By FRANCIS E. CROSS,
Deputy Clerk

Attorneys Lindsay, South, and Curran except to verdict as to Arkalian, Coates, and Olson respectively.

The court thanks the jury and dismissed it for the term.

The court now orders that the following order be entered:

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, NORTHERN DIVISION

IN THE MATTER OF THE CONTEMPT)
OF FRANK CURRAN IN THE CASE OF)
THE UNITED STATES OF AMERICA) ORDER
vs. ALEXANDER STUMPF et al, No. 1528-)
C-Criminal.)

Good cause appearing therefor, it is ordered that the order heretofore made adjudging Frank Curran in contempt of court and that he pay a fine to the United States of America in the sum of \$20.00, be and the same is hereby amended by adding thereto the following:

“and it is ordered that in default of such payment he be placed forthwith by the United States Marshal in the Fresno County Jail and stand committed until such fine is paid by him.”

so that the said order is amended shall read as follows:

Frank Curran is adjudged in contempt of court and is ordered to pay a fine unto the United States of America in the sum of \$20.00, and it is ordered that in default of such payment he be placed forthwith by the United States Marshal in the Fresno County Jail and stand committed until such fine is paid by him.

Dated this 15th day of October, 1931.

Geo. Cosgrave,
U. S. District Judge.

Attorney Lindsay requests a continuance to October 19, 1931, 10 a.m. for pronouncement of sentence, and, the Government not objecting, sentence is so continued.

With the Government's approval, three of the defendants are released on their present bond until pronouncement of sentence.

Upon motion of P. V. Davis, Esq., Government Physical Exhibits, 1, 2, 3, and 6 are returned to the Marshal for safekeeping.

At a stated term, to wit: The October Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, California, on Monday, the 19th day of October, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable GEO. COSGRAVE, District Judge.

United States of America, Plaintiff,)	
)
vs.)	1528-C-Crim.
)
Alexander Stumpf, et al., Defendants,)	

This cause came on for sentence of the following named six defendants, P. V. Davis, Assistant U. S. Attorney, appearing, other counsel appearing as hereinafter indicated: J. L. Coates, first and fourth counts (L. L. South and H. A. Savage, Esqs.); Arthur Emil Olson, first count (E. J. Fenston, Esq., pro tem.), D. Arkalian, first, second, and fourth counts (C. E. Lindsay, Esq.); Alexander Stumpf, first and fourth counts; Kirkorian, first count; Eugene L. Kenney, all counts. All of the six said defendants are present. Pronouncement of sentences is continued to October 24, 1931, 10 a.m.

At a stated term, to wit: The October Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, California, on Saturday, the 24th day of October, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable GEO. COSGRAVE, District Judge.

United States of America, Plaintiff,)	
)	
vs.	)	1528-C-Crim.
)	
Alexander Stumpf, et al., Defendants,)	

This cause came on for sentence of J. L. Coates on the first and fourth counts, P. V. Davis, Assistant U. S. Attorney, appearing, and L. L. South and H. A. Savage, Esqs., counsel for defendant Coates, appearing; G. M. Baird, reporter present; the defendant being present. The cause also came on for the sentence of the following defendants, all of whom are present with counsel as indicated: A. E. Olson (first count)—F. Curran, Esq. D. Arkalian (first, second, and fourth counts)—C. E. Lindsay, Esq. A. Stumpf (first and fourth counts)—C. Minard and F. W. Docker, Esqs. Z. Kirkorian (first count)—D. E. Peckinpah, Esq. E. L. Kenney (all counts)—B. M. Green, Esq.

Upon request of Attorney Docker, the sentence is continued, as to Stumpf, to October 26, 1931.

Attorney Savage files motion for new trial of Coates; motion is denied.

Attorney Peckinpah requests leniency for Kirkorian.

Attorney Lindsay asks that second count, as to Arkalian, be quashed and moves in arrest of judgment on said second count and for a new trial on the first, second, and fourth counts, and, the court having denied motions, moves for leniency.

Attorney Curran makes a statement as to Olson and asks probation.

Attorney Green, for Kenney, makes a statement.

The court makes a statement and pronounces sentence upon defendants for the crime of which they stand convicted.

And it is the judgment of the court

That defendant J. L. Coates be imprisoned in the federal penitentiary at McNeil Island for one year and one day, pay a fine of \$1000, and stand committed till paid, on the first count; and that he pay a fine of \$100 and stand committed till paid, on the fourth count.

That defendant Arthur Emil Olson, on the first count, be placed on two years' probation, during which period pronouncement of sentence will be deferred, provided that said defendant immediately report to Deputy Marshal S. J. Shannon, as probation officer, defendant to further report to said officer not less than once every three months for instructions, and for any infraction of the law, with the possible exception of parking ordinances, defendant will be subject to sentence.

That defendant Eugene L. Kenney, on each of the four counts, be placed on two years' probation, during which period pronouncement of sentence will be deferred, provided that said defendant immediately report to Deputy Marshal S. J. Shannon, as probation officer, defendant further to report to said officer not less than once every three months for instructions, and for any infraction of the law, with the possible exception of parking ordinances, defendant will be subject to sentence.

That defendant Zone Kirkorian, on the first count, be imprisoned in the federal penitentiary at McNeil Island, for one year and one day, pay a fine of \$500, and stand committed till paid; bond fixed at \$10,000 pending departure for McNeil Island.

That defendant D. Arkalian, on the first count, be imprisoned in the federal penitentiary at McNeil Island for one year and one day; that, on the second and fourth counts, he pay a fine of \$500 on each of said two counts, and stand committed on each said fine till paid.

At a stated term, to wit: The October Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, California, on Monday, the 26th day of October, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable GEO. COSGRAVE, District Judge.

United States of America, Plaintiff,)	
)	
)	1528-C-Crim.
Alexander Stumpf, et al., Defendants,)	

This cause came on for sentence of Alexander Stumpf on counts 1 and 4; F. M. Chichester, Assistant U. S. Attorney, and F. W. Docker, Esq., counsel for defendant Stumpf, appearing; defendant Stumpf present; M. A. Clark, reporter.

Attorney Docker and the court make statements and

The court pronounces sentence upon defendant Stumpf for the crime of which he stands convicted,

And it is the judgment of the court that defendant Stumpf, on the first count, be placed on five years' pro-

bation, to report to probation officer S. J. Shannon as required by said officer and at such times and in such manner as said officer may direct—not less than once each month; and, if said defendant violates any law other than minor ordinances such as traffic or parking ordinances, that he be brought before the court and subjected to the maximum sentence that can be imposed; and that, on said first count, imposition of sentence be meanwhile suspended. And it is the further judgment of the court that said defendant, on the fourth count, pay a fine of \$500 and stand committed to the Madera County Jail till paid.

At a stated term, to wit: The October Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, California, on Tuesday, the 27th day of October, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable GEO. COSGRAVE, District Judge.

United States of America, Plaintiff,)	
)	
vs.	)	No. 1528-C-Crim.
)	
Alexander Stumpf, et al., Defendants,)	

Good cause appearing, defendant Alexander Stumpf being on probation for five years, and the imposition of sentence on said Stumpf on the first count having been suspended meanwhile, it is order that the motion of F. W. Docker, Esq., now made, to exonerate bond of said defendant be, and the same is hereby, denied.

The sum of \$500 is received in payment of fine, and draft is obtained on the Bank of Italy, Fresno, for said amount, draft No. 538,862, dated October 27, 1931.

At a stated term, to wit: The October Term, A. D. 1931, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room there of, in the City of Fresno, (Called at Los Angeles), on Friday, the 6th day of November, in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable GEORGE COSGRAVE, District Judge.

United States of America, Plaintiff,)	
)	
)	
vs.	)	No. 1528-C-Crim.
Alexander Stumpf, et al., Defendants,)	

This cause came on for hearing on motion of Zone Kirkorian (who is present) for an order modifying judgment and sentence heretofore rendered and imposed herein, pursuant to order filed Oct. 30, 1931. C. R. Triay, court reporter, present. Attorneys D. E. Peckinpah, counsel for defendant Kirkorian, and S. W. McNabb, U. S. Attorney, make statements. J. G. Ohannesian, Assistant U. S. Attorney, makes a statement, and has no recommendations to make, but feels that the court would be justified in reconsidering sentence. Attorney Peckinpah makes a further statement. The court makes a statement and orders that fine be remitted, but otherwise that sentence stand, and defendant is remanded to the custody of the Marshal at Los Angeles.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA NORTHERN
DIVISION

UNITED STATES OF AMERICA, ()
Plaintiff and Appellee, ()
-vs- ()
ALEXANDER STUMPF, OLIE OLSON, ()
THEODORE BRIX, ZONE KIRKORIAN, ()
D. ARKALIAN, JAMES PROCTOR and ()
EUGENE L. KENNEY, Defendants, ()
and J. L. COATES, ()
Defendant and Appellant. ()
----- 0

BILL OF EXCEPTIONS OF DEFENDANT
J. L. COATES.

BE IT REMEMBERED: That heretofore the Grand Jury of the United States, in and for the Southern District of California, Northern Division, did find and return to and before the above entitled court its Indictment against the defendants, Alexander Stumpf, J. L. Coates, Olie Olson, Theodore Brix, Zone Kirkorian, D. Arkalian, James Proctor and Eugene L. Kenney, and that thereafter, at a regular term of said District Court of the United States for the Southern District of California, Northern Division, the defendants J. L. Coates, Olie Olson, Theodore Brix and D. Arkalian, being then and there arraigned in person, appeared and pleaded not guilty to the said indictment.

(Testimony of Alexander Stumpf)

Thereafter, on the 6th day of October, 1931, the above cause came on for trial before the Honorable George Cosgrave, one of the Judges of said court, and a jury was duly impaneled to try said cause. For the various parties to said cause there were the appearances following:

For Plaintiff: Hon. Samuel W. McNabb, United States Attorney, and Peter V. Davis, Esq., Assistant United States Attorney:

For Defendant J. L. Coates: N. Lindsay South, Esq., and H. A. Savage, Esq.;

For Defendant Olie Olson: Lawrence Myers, Esq.;

For Defendant Theodore Brix: Frank Curran, Esq., and E. J. Fenston, Esq.;

For Defendant D. Arkalian: C. E. Lindsay, Esq.

Thereafter, and after the trial of said cause, and prior to the preparation and filing of this Bill of Exceptions, David E. Peckinpah, Esq., was, by order of said court, substituted as attorney for the defendant J. L. Coates in lieu of N. Lindsay South, Esq., and H. A. Savage, Esq.

After a jury had been duly impaneled and sworn to try said cause, the following proceedings were had:

ALEXANDER STUMPF

was called as a witness on behalf of the Government and, after being duly sworn, testified in substance as follows:

DIRECT EXAMINATION

My name in full is Alexander Stumpf and I live, and have lived nearly all my life, in Fresno, California. I was born and raised here. For the last three months I have been employed working for Libby, McNeil & Libby, a packing concern.

(Testimony of Alexander Stumpf)

Once before I was convicted of a felony in this court. This is the second time. I have pleaded guilty to this charge in this case, and I was convicted once before.

I am acquainted with Ted Brix, or Theodore Brix. I am also acquainted with the defendant J. L. Coates. I know D. Arkalian; also Mr. Kirkorian. I know the defendant Proctor and also the defendant Kenney. I knew all the defendants and am familiar with them. I know Mr. Malter and Mr. Kane, Mr. Kerr and Mr. Foss.

About the early part of September, 1930, I had a business transaction with Theodore Brix. About six months before that I had my first business transaction with Brix. It was concerning aviation. He joined the West American Aviation Corporation, and I was selling stock for the company.

I had known Brix for some time. I don't know the length of time, but maybe I had known him ever since a boy.

I went to jail about February and got out July 18, 1930. I didn't see Brix while I was in jail, but saw him the early part of September, after I got out. I saw him here in Fresno, at his office at the Brix Service Station.

I went over to the station, and Brix says: "I want to talk to you on a business proposition." At that time I did not know that Brix wanted to see me. He said he and another friend, he had a small still making brandy at the time, but they weren't selling it quite fast enough, they wanted to know how much I could distribute. At that time he told me that the friend was G. H. Malter, who was not present at the time.

(Testimony of Alexander Stumpf)

In response I said: "If it is a good proposition I will take you up." Then he said: "I will get ahold of Malter." In fact, he called him on the telephone, Malter's house, and he wasn't there, but he said, "I will get hold of him in a few days and I will let you know, and we will meet here." That was all that took place at that interview.

In a few days I went back to the Brix Service Station again, and Ted said: "I got hold of Malter and he said he will be here by noon, 12 o'clock, and we will talk the matter over." Prior to that time I had never met Malter; did not know him at all. At this time Brix knew that I had served a term in the county jail. Everybody knew it. Brix and I discussed it many times.

About an hour after Brix called on the telephone he appeared. While waiting for Malter, Brix and I talked to some extent with reference to liquor transactions. When Malter came Brix introduced me to him and said: "That is the fellow that, he knows all about it. He has got a good connection with a man out here in the country." And then he said further: "Do you want to take him in, or do you want to show the matter like that in the—" Malter was laughing and he said: "All right, we will go in; I am as game as you are."

The proposition that was made was that I was supposed to take care of the entire output. They said at that time that they had a still. They said it was small capacity. The conference between us lasted a couple of hours. They stated: "Mr. Malter will handle all the cash, as you sell it you hand all the cash over to Mr. Malter." Brix said, well, one of them, I do not know which one, "We will have to put some more money into

(Testimony of Alexander Stumpf)

the outfit." So Brix left and got \$500 in cash and handed it over to Hugo Malter, in my presence.

That was some time in September, in the office of Brix at the Brix Service Station, in 1930. The three of us were present. As compensation I was supposed to get salary and commission at that time. I think the salary was to be \$10 a day and I was to draw a one-third interest, one-third of the profits.

After that first conference Malter and I rode around talking matters over, what we were going to do, and so on.

Q. Tell us what you and Malter said, that is, I don't mean the exact words, but in substance what you said and what in substance Malter said.

MR. CURRAN: I object to that as hearsay and not binding on the defendant Brix.

MR. McNABB: Of course, your Honor, it would not be hearsay when we have established a conspiracy. It may be subject to a motion to strike. But we can not prove a conspiracy without going to a certain point and then if the conspiracy is not proven of course it would not be admissible as against the defendant who was not present.

THE COURT: The conversation that you are asking about, is that occurring subsequent to the meeting of Malter, Brix and the witness, which he said took place at the station? I assume that it is Mr. Brix' station?

THE WITNESS: Yes, sir.

MR. McNABB: That is correct. It is subsequent.

THE COURT: Subsequent to the time when, according to the testimony Mr. Malter became a member of the conspiracy, therefore what he said is clearly admissible after that. Overruled.

(Testimony of Alexander Stumpf)

A. Well, he was telling me how good a brandy they had, and so on, that they were selling a little, but they weren't selling quite a bit at that time. He asked what kind of connections I could make. So I went and told him how long I had been in it, and kept on talking, so we adjourned until the next day.

Next day Malter picked me up at my house and we went to the Brix Service Station and we told him. The three of us had a very small conversation there at that time. All three of us were talking that we were going to start in now, and I wanted to see what kind of outfit they did have, what kind of brandy they had, before I would go out ready to sell. They did not say where the still was located at that time.

Hugo and I, we left there, we drove out to Winery Avenue, he said: "Here is the fellow by the name of Olson," he said, "who has been making it for us. He is a peculiar fellow. We won't go in on him at this time. We will go over at the ranch and we will talk further on this deal." We went over on Malter's ranch. We went in the house. There was nobody present except me and Malter.

He told me then that they didn't have a still but this man Olson would build for them. Malter made the statement, he said: "Olson is the man that will build the still." He didn't say which Olson at that time. By that time it got to be about 12 o'clock. He said: "I will have Olson over here, I am going to meet him over here around 2 o'clock at the house." So he took me on home, and in the afternoon he came and picked me up again. We went

(Testimony of Alexander Stumpf)

back to his ranch, and Olie Olson was there then. I had not known Olie Olson prior to that time.

He introduced me to Olie Olson, and he said: "He is the man that knows how to build stills." I questioned Olson a little bit, how much he knew about a still, and Malter and I decided, "Well, we will take Mr. Olson to build the still," and we gave him a \$100 bill to buy material to begin with on the still. That was about 2 o'clock, or a little after. Olson said he didn't have a place to build it, so Hugo said that he could build it right there on the ranch, in the library there. This was supposed to be an alcohol still. There was nothing said to me by Mr. Brix or by Mr. Malter about going into the grape concentrate business. Neither one of those gentlemen ever at any time during my transactions with them made any statement to me about my engaging in the grape concentrate business.

After that interview Mr. Malter and I went out to look over a place to set up the plant. We drove all over. We didn't find any place at that moment. During that trip Malter and I had more conversation about the still business. We talked about how big a capacity we wanted, what we were figuring on putting into it, and so on. We did not find a place for the still that afternoon. That night he took me back home again.

The next morning we met again at the Brix Service Station. Hugo Malter, Mr. Brix and myself were present. It was some time in the morning, must have been around 9 or 10 o'clock. We told Brix we got Olie Olson started and gave him some money to buy material for the still. Brix said: "That's good. You want to hurry up and

(Testimony of Alexander Stumpf)

get it started, so we can get our money back.” He said we could find a place to put the still on. Malter said, “All right, we will come back out and look again.” That was all that was said on that occasion.

Malter and I went out and we propositioned Cap Olson, we told him that we would give him \$100 a month for the use of the place and \$10 a day for working for us. Cap Olson’s place is on Winery Avenue. That is right in the City of Fresno. Olson and his wife, and J. H. Malter and myself were standing out in the yard talking it over about putting the plant there and moving tanks there. Cap Olson and his wife talked it over, and then they says, “Well, we will accept your proposition.” I says, “Well, how soon could we move tanks over here?” “Well,” he says, “move them in tonight.” I says, “All right.” So we gave him \$100 and we told them there was going to be a Jap in there tonight with some tanks on the truck.

So Malter and I left, and we went over to the Jap; Malter hired the Jap. His name was Hatta. We told Hatta that we wanted them tanks hauled over to Cap Olson’s place that same night, not to fail, and the Jap hauled them over there. Only a part of a tank was hauled over to Olson’s place. That night I took Malter home and then went home. I next saw Malter at his ranch the following day. We went over to Cap Olson’s place, and when we got there Cap Olson told us he had changed his mind and didn’t want to accept our proposition. He told us that he got scared. We said that was perfectly all right. We left him.

Then we went to look over another place, but found none that day. The next day we decided to put it on J. H.

(Testimony of Alexander Stumpf)

Malters ranch. He has a kind of a house in the back there, setting away from Winery, so we decided to put it there. We talked to Olie Olson in the morning, and he said that he would rent 5 acres and he would be in charge of it over there. There is a small house on the 5-acre place, setting in the bank, on the Malter ranch. Malter and I told him what it was for; that it was to put up a still. Malter wanted to have the lease. He wanted to cover on himself so that he could not be involved in it. We wanted a lease on the ranch in somebody else's name.

Olson agreed to build a still. We talked to Olson. He was working in Malter's library, building the still; we talked to Olson about this 5-acre place, and he accepted it. Finally I says, "We will pay you \$10 for doing that."

In about 4 or 5 days Brix came out to the Malter ranch and we saw him. We took him in to the library and showed him that the still was started. The library is on the outside of the house. It is connected with the winery. It is about 150 feet long and 50 feet wide. It is plumb full of books. When Brix came out Olson said that his iron wasn't very good, and the solder wasn't so hot, so Brix says: "I will get you some good solder and soldering iron." At that time the still was taking shape. He had a column all together and soldering in the heads. Brix said he would go and get some good solder.

He came back the same day and had some solder and soldering iron. He said to Olson, "Let me solder for a little while; I will show you how to make a neat job." Olson said, "All right," and Brix proceeded to solder on the still. He worked there about five minutes. He said

(Testimony of Alexander Stumpf)

to Olson, "You solder like this and you get a neater job than the one you are soldering."

I would know that column if I saw it. That is the column. This is not either of the columns. I have seen these columns before. I have seen them out on the ranch at Auberry before they were set up. I can identify this (referring to one of the columns) as part of the equipment that was on the Auberry ranch.

The base and the big column is the one that came off of the Malter Ranch. The shorter column was made on the Foss ranch.

MR. McNABB: We offer Government's Exhibit No. 1 for identification at this time.

MR. DAVIS: And I suppose that may be marked as Government's Exhibit 1?

THE COURT: It being the longest column?

MR. DAVIS: Yes, sir.

THE WITNESS: The original column was stolen. I don't know when. It was completed and Malter hid it some place, and when we went back to get it, why, it wasn't there. The other smaller drum is called the condenser.

MR. McNABB: We offer the condenser for identification as Government's Exhibit No. 2.

THE WITNESS: This arrangement at the base is called the base.

MR. McNABB: We at this time offer that as Government's Exhibit 3 for identification.

When Mr. Brix and Mr. Malter and myself first engaged in this enterprise, I met a man by the name of

(Testimony of Alexander Stumpf)

Denney. I met him at Brix Service Station. It was after I first took up the matter of the distribution of whisky with Mr. Brix. It was when we just got started on building this still. The circumstances of that meeting were that G. H. Malter and I went over to the Brix Service Station and met Mr. Brix, and he had a fellow over there by the name of Denney. Mr. Brix told us that this man was going to buy the entire output under a certain price. So we decided we would go some place and discuss the matter. So he suggested that we go over to the Brix home place and discuss the matter over there. We went there, and had a discussion regarding the matter. Denney was present. There were five of us present. I don't know the other party, that is supposed to be Denney's partner.

Mr. Brix told Denney that we were operating or were ready at that time and our entire output was sold at that time, and that we were going to enlarge the plant, and we would take him under certain consideration, providing that we could get a certain price for the alcohol. I don't know where this man Denney lived, or where he lives now. No definite agreement was entered into with Denney that day. Denney offered \$3 a gallon to buy the entire output and dispose of it as fast as we could manufacture it. The offer was not accepted by us three gentlemen. I said that we could get more money for it and we had better talk it over among ourselves, the three of us, to see first what we would do with Denney. So we stayed at the house for awhile and Denney left, and he came back within a few days later. Then we had another conference. The same parties were there. At that conference we turned down Denney. We never came to any definite agreement.

(Testimony of Alexander Stumpf)

About this time Brix gave me \$150 to buy an automobile. I gave a note for it. The agreement was that inasmuch as I had to have a means of getting around to act in the business, he loaned me \$150 with which to buy a car. I was to furnish my own transportation. The note was supposed to be paid back within 90 days. It was supposed to be paid out of my share of the proceeds of the business. Suit was afterwards brought on that note by Mr. Brix. I have never paid the note.

I remember a tire transaction between Mr. Brix and Mr. Olson. Mr. Olson had to have a tire to put on his car in order to run around to buy material and different things for the still, and he didn't have any money, so Brix says, "I will go into town and send you out a tire right away." It wasn't but about half an hour, why, there was a tire there for his car. I was right there.

That was the first day when the three of us met together. I don't know the exact date of it.

It was some time in September \$500 was paid by Brix to Malter. After that time Mr. Brix paid me money. Brix gave me \$500 at the fair grounds the day before the fair started, in the presence of Larry Woods and Jed Clark, to give to G. H. Malter. After that I had a conversation with Malter and Brix in regard to that \$500. The first time the three of us got together I got the \$500 and turned it over to G. H. Malter.

We met right after the fair and the three of us, Brix, Malter and myself, and I says, "Hugo, you better tell them that you received the \$500 that I gave you the day before." There was no dispute about the \$500. I know a place known as Kane's place. It is located on Peach and Butler

(Testimony of Alexander Stumpf)

Avenues, I believe. It is off Butler there, close to the railroad tracks.

I purchased tanks with some of this money that had been raised. I purchased them from the Compress Cotton Gin out here on Calvert. I bought three tanks from them. I also bought other tanks, but not with that money. Those tanks that I purchased were taken in the first instance over to Kane's place on Peach Avenue. There was no particular reason for taking them to Kane's place, only G. H. Malter didn't want to have them over at his place. We asked Kane if we could store our tanks over there for a few days, and he said yes. They were just put in storage there. There was no arrangement by which they were to be set up there. They remained there probably two weeks, and from there they were taken over to A. J. Olson's place first, and were left there about 24 hours. A Jap named Hatta took them over there. From Olson's place they were taken to G. H. Malter's place, where they remained for several weeks. From Malter's place they were taken over to Caruthers. I had rented a ranch at Caruthers. They were at Caruthers a couple of weeks. From the Caruthers ranch they went back to Malter's place. They remained there for about 30 days until they were removed again, this time, to the H. N. Foss ranch. Andreas, a young fellow working for Coates at the Service Station, hauled tanks back again from Caruthers place to Malter's. They were hauled from the Malter place to the Foss place by Hatta, the Jap.

I first met the defendant J. L. Coates in Fresno. G. H. Malter and I were coming down Fulton Street, and he says, "There goes Lloyd Coates." He says, "He is

(Testimony of Alexander Stumpf)

interested in some scheme of this kind. I will go and talk to him." He said, "Do you know him?" I said, "No." We came down Tulare Street, and Malter got out of the car and went over and talked to Coates. This was some time in October, 1930. I overheard the conversation between Malter and Coates at that time.

I next met Mr. Coates at the G. H. Malter ranch. It was the same day that we saw him on the street. We had a conversation with Coates out there. Malter and myself were present. Mr. Malter told him that we wanted to set up a still, and asked if he wanted to come in with us. Coates said, "Well, if it's the right thing, why, I will be glad to come in." Malter told him it was an alcohol still. Coates then asked me several questions. Then he said, "Well, I will come in with you." Coates asked me if I ever ran a still before. He asked me what kind of connections I had. He wanted to know my life's history. I told him that I was selling booze before, and I just came out of jail not so long ago. He said he was satisfied that I knew the business, that I knew something about it. I told him that I had several locations in view. I said, "If you want to see them, why, I will take you out and show them to you." So he says, "Fine." He says, "We will go out and look at them," so we got into his car and I took him out here behind Clovis and showed him a big ranch out there that a fellow owns by the name of Smith. Then I says, "This fellow lives in San Diego. He don't live here. We can take a trip down there and see what we can do with him." I said also, "There is a place down here at Caruthers." We looked that over, too. We came back. He says, "Well, I will meet you tomorrow."

(Testimony of Alexander Stumpf)

Next day I met him again at the G. H. Malter ranch. Coates and Malter and myself were present. Well, the three of us were there, and I said in order for me to go to San Diego there has got to be some money in the pot for me to go. Coates asked, 'How much do you think you need?' "Well," I said, "it will cost at least around \$40 to \$50 to make the trip there but we must as well put in enough money to start in right as to start in half-way." They said they would go to town and get \$500 apiece. They both left together in one car. I remained on the ranch. They came back with the money and paid me \$500 apiece.

After I got the money Coates said: "You want to get busy and get down there and get back as soon as you can, so we will know where we are at on this place." He said, "Go over to the service station, over to mine, and fill up with gas and oil and charge it to my account." I says, "No. While we have this money we might as well keep it straight and pay for the gas and oil as we go along." That is all that was said by any of us.

Subsequently I went to San Diego, but was not able to make any arrangement for the Smith ranch. I left in the afternoon, and was back next night. When I got back Mr. Coates and Mr. Malter were not in town. I saw them later. I saw Malter and he got hold of Coates, and we met at the Malter ranch. Coates, Malter and myself were present at that meeting. I told them what the outcome was about the Smith ranch, that he did not know at the present time whether he wanted to rent it out or not. I told them I had expended \$40 on the trip. They said we had better go over and see what could be done about

(Testimony of Alexander Stumpf)

the Caruthers ranch, and I told them I was satisfied I could close it right away. They said I should go over and close it up, so I went to Caruthers and saw the man over there and made an arrangement with him and rented the place. Then we went ahead and hired some men to go to work. Coates said he had a good man by the name of Andreas, and Malter said he had a good man by the name of Kerr. Both men were hired. Andreas was supposed to do the hauling back and forth, and Kerr was to work on the place.

About this time we talked about buying a truck. This conversation was at Malter's place, Coates, Malter and myself were present and it was some time in October, the latter part. Coates said he could buy a truck on discount from G. H. Walsh. The three of us drove over there and saw some trucks. We then talked to Walsh and purchased a Chevrolet truck. The three of us went to Malter's place together. We purchased the truck on contract. We paid \$100 or \$125 down. The contract was supposed to be in Andreas' name, because he was running the truck, so we had Andreas sign the contract.

The defendant Coates was never present on the premises at Caruthers. I saw him in the neighborhood.

At a conference at the Malter ranch several weeks after we had rented the Caruthers place, we decided to move. It didn't look good to us, so we moved. By "we" I mean Malter and Coates and myself. The place didn't look good because we kind of got a tip that the officers were going around the place seeing us moving in and out, so we had to leave the premises. The conversation which we had was as to how much money it cost us at that place.

(Testimony of Alexander Stumpf)

There were some figures made at that time about expenses incurred. Mr. Coates made those figures. I have *been* before this card which you show me.

The Government offered this card as Exhibit 4 for identification.

I saw Mr. Coates' writing on a card similar to that. Mr. Coates wanted to know how much money was spent on the place, so I had it down on a piece of paper, and I read it out to him. I haven't that piece of paper now, and I don't remember what the various items were, from memory. I can tell you some of it. I don't know, there were tanks, there was electricity, there was gas and oil expenses, a trip to San Diego and lumber bill. Those were all noted down on the yellow card that I saw at the time by Mr. Coates. Gas was gotten from Mr. Coates in large quantities for the enterprise. We had to have some gas, so Mr. Coates said: "You come over to the station and pick up three drums of gasoline." So I said, "All right, we will send Hatta over there tonight and we will be there." He said, "It will be on a truck setting in back of the service station. All you have to do is drive up, and if there is nobody there, put them on the truck and go away." That was while we were at the Caruthers ranch. We decided to use electricity for heating purposes at the Caruthers ranch. It was available.

After we got frightened and left the Caruthers ranch, we brought the equipment back to the Malter ranch and looked around for a different location. When I say "we" I mean Malter and myself.

We looked over different territories, and finally decided on a place we would take, El Senora Vineyard, that is on Winery Avenue.

(Testimony of Alexander Stumpf)

Q. Was there any discussion with Mr. Coates about the new location?

A. Yes, sir.

Q. When and where and who was present?

A. Coates and Malter and myself, we drove by in Mr. Coates car and showed him the location.

We could not close the deal there in El Senora. Then we didn't do anything for a while until we got in connection with the H. N. Foss ranch. I made the contract with the H. N. Foss ranch. I made it with Babe Bell and H. N. Foss. The ranch was finally bought. The paper which you show me is one of the originals of the contract of purchase with Mr. Foss. That is my signature there and also Mr. Foss' signature.

The Government thereupon offered in evidence, and there was introduced as Government's Exhibit 5, the contract of purchase for the Foss ranch. The document bore date December 6, 1930, and recited receipt from Alexander Stumpf of \$500 as deposit on account of the purchase price of the ranch, and provided that the balance should be paid in designated installments, the total balance being \$7000.00. The instrument bore the signatures of Bessie V. Fos, H. N. Foss, by H. N. Foss and Alexander Stumpf.

After I had bought or leased this Foss ranch and entered into this contract, I had a meeting with Coates and Malter. We met practically every day, or every other day. Sometimes it would be at the Coates Service Station, and sometimes out at the house. There was discussion about the still and liquor activities. The first conversation after we had moved the equipment to the Foss ranch was between Coates, Malter and myself on the Foss ranch. I

(Testimony of Alexander Stumpf)

drove out to the Malter ranch one night and Coates and Malter were there. Coates said he wanted to go out there and see the place. He wanted to see how the equipment and the plant looked set up. I said, "All right, we will go out there." So Coates and Malter and myself went up there and went into the barn and saw the equipment.

Q. Did you have any conversation with either one of them at that time?

A. Well, Mr. Coates said that it looked very good. Malter was well satisfied with it.

MR. SAVAGE: Just a moment. I ask that both answers be stricken out as conclusions of the witness.

MR. SAVAGE: I move that the answer be stricken out, the last two answers of the witness, as a conclusion.

THE COURT: That he and Malter and Coates went up to the Foss ranch?

MR. SAVAGE: No, he said that Coates thought it was all right, and Malter didn't think it was very good.

THE COURT: Well, I assume when he is giving his understanding of the result and the statements made at the time, that is properly admissible. Overruled.

MR. SAVAGE: Note an exception.

Q. By MR. McNABB: * * * Had the still then been completed to a point where it was operating?

A. No, sir.

Q. What was said at that meeting by Foss or by Coates, and what by Malter and what by you after looking at the still?

A. Well, I don't know everything. We had a long conversation.

(Testimony of Alexander Stumpf)

Q. Well, I mean in substance, the substance of it.

A. Well, as I said, we went into the barn and Mr. Coates, he said, "This is the first time he ever seen a pot set up." It looked very good to him, and Malter said he was satisfied with it at that time. We kind of looked over the ranch, the lay-out a little bit, because it was dark.

We didn't meet anyone else there. I didn't see Proctor or Kenney. Then we came back to Fresno.

On Saturday Coates took me back up to the Foss ranch. The still was not in operation at that time. It was set up. It wasn't running. Coates saw the still on that visit. We were not there more than ten minutes. I told him we were going to start the pot in a day or so and that I would bring him a sample down, to see what it is like. Then we came back to Fresno.

Subsequently we started the still in operation. It was about three days after the visit of Coates that I got the fire under it. As a result of the operation of the still I got some alcohol. We had enough so that I poured it out in a small mayonnaise jar and took it down to Coates' Service Station. He was there and of course they sampled it. Coates said it was very good. Then I went back out there again. I told him that we couldn't run it because we didn't have the proof. We only had a proof of about 150. I said the mash was not fully fermented, we would have to wait until the mash was fully fermented. The reason the mash was not fully fermented was because it was too cold weather. That situation had to be remedied by boarding up the barn on the inside. I communicated these recommendations to Mr. Coates.

(Testimony of Alexander Stumpf)

Prior to this time I had met a man named D. Arkalian, one of the defendants. I first met Arkalian about the last days in November, 1930. I met Arkalian at my house in Fresno. He said he wanted to see me on some important business. I said I could meet him some time after 8 o'clock. He said all right. We arranged to meet in front of Tiny's Waffle Kitchen, on Broadway. Later I met him there. We were sitting in his car. He said he had a big proposition, if I was interested in making some money. I said, "Yes." I says, "When it comes to money, I am always interested." So he said that he was going to Los Angeles; that he had been transporting some narcotics back and forth there. I said, "Well, that is out of my line." Well, he says, he is going to Los Angeles. I says, "Well, I have got a good friend down there that you might be able to see. I can send him a telegram. He is in that kind of business, and maybe you can make some connections with him." So he left the next day and went to Los Angeles, telling me he would see me when he got back. I saw him when he got back. He came over to the house.

MR. LINDSAY: If Your Honor please, I move that all the testimony of this witness as to the conversation between him and the defendant Arkalian at the time specified be stricken out. It does not seem to have any connection with this matter here. * * *

THE COURT: It is preliminary, showing the relationship; between the parties and explaining their relations. Perfectly proper, I think. Overruled.

MR. LINDSAY: Save an exception.

After Arkalian came back from Los Angeles I had a conversation with him. This took place again in front of

(Testimony of Alexander Stumpf)

the Waffle Kitchen on Broadway. Arkalian and myself were present. He said he made a big connection down there with some fellow about Nailey Miller himself, he made a connection, but I don't know where. But he said, "Did you like to make some money?" I said to him, "Well, I have got a good proposition for you." He asked what it was, and I told him. I told him I had a still and some vats and a good place to make booze. I said it would take about \$1500 to invest in the sugar for operation. He said, "I don't like that business." He said, "I don't know much about it. I like the other business." "Well," I says, "we can't do anything." He says, "Well, I will go to the office and I will let you know in half an hour. I will be back here and let you know whether I will go with you in that." I says, "Well, where will me meet?" He says, "Meet me at the service station." That is a Kern, I don't know, the Richfield station on Broadway—Broadway and Mariposa.

Subsequently I met him there. He said he would go into it; that he had to go to Modesto, to see his uncle, or brother, or somebody. I don't know who, but some other fellow by the name of Arkalian. He would be back and he would put in the money next day. Subsequently I again saw him, in front of the Waffle Kitchen. He said he couldn't get the money from his brother, or whoever the relative was in Modesto. He said, "The only way I think I could promote this sugar is to buy it on credit." He said, "We have been buying off of Justesen, the chain store," he says, "and I think that I can promote sugar from there." So I says, "It ain't very good policy to charge it because on account of a checkup."

(Testimony of Alexander Stumpf)

We then discussed the matter of his borrowing some money. I told him about Franzke. He said he would give his automobile as security. We went to Franzke and he agreed to lend Arkalian \$1500. He was to close the matter with Franzke the following morning. I didn't see him until the following afternoon. Then he told me that Franzke had turned him down. He then said he could borrow the money some other way. He then asked me if I knew Zone Kirkorian, and I told him I did. Kirkorian is another defendant in this case. He said, "I will get Zone Kirkorian. I am satisfied that Zone will go. I will put the proposition to him". We then parted, promising to meet the following day. We met next day at the same place, in front of the Waffle Kitchen. Arkalian and myself were present. He stated that he had made an appointment with Kirkorian right after lunch.

The three of us met subsequently at the Sequoia Hotel. Zone Kirkorian, Arkalian and myself were present. Kirkorian asked me what I had, and I told him I had a still and some vats and I had a good location to put it at. We made an appointment to meet the following day to visit the Foss ranch, and then separated. The next day Kirkorian, Arkalian and myself met, and all three went in Arkalian's Ford automobile to the Foss ranch. We got there some time in the afternoon. We didn't go all the way to the ranch, because there is a kind of a hill like. We stopped on top of the hill and looked the situation over, and drove back out. We did not go down to the house. At that time I didn't explain anything to Kirkorian and Arkalian about the still. We were talking about the location. That was prior to the time we moved to the

(Testimony of Alexander Stumpf)

Foss ranch. We came back to town, where Kirkorian asked that we meet him again on the following day. He said he would give us the money then.

Next day we met him at the hotel again. Arkalian, Kirkorian and myself were present. We took another ride up to the ranch. On the way back I showed him another location, which belongs to the Bullard ranch. We looked at the place, and on the way in Kirkorian reached in his pocket and handed me 15—handed me \$1200. Kirkorian reached in his middle pocket and pulled out a roll of bills. I did not know how much there were and counted them out. We were talking on the way back that we would buy the sugar off of Zone Kirkorian's father. I told them it was all right with me wherever they bought it. He named the present price of sugar and kept \$300 out of \$1500 and handed me \$1200. I don't know what Arkalian said about it just at that time. Kirkorian and Arkalian then went to San Francisco. They brought back 100 pounds of yeast and two 5-gallon cans of grain syrup. Zone Kirkorian brought that back. After they got back they asked me what was going on out there. I told them we were setting up the vats now, getting ready for the mash. Zone Kirkorian and Arkalian were together. The conversation was either at my house or at the hotel.

Q. Now, what other transactions did you have with Arkalian?

MR. LINDSAY: It does not appear, if your Honor please, and I object to the question as immaterial and irrelevant. It assumes something not in evidence, because it does not appear yet that he ever had any transaction with Arkalian.

(Testimony of Alexander Stumpf)

THE COURT: Well, I think the question is to be considered what if any there were. The court will assume that. Answer the question. Did you have any transaction with Mr. Arkalian?

MR. LINDSAY: Save an exception.

A. Yes, sir.

Q. What was the next transaction you had with Arkalian?

MR. LINDSAY: Same objection, if your Honor please.

THE COURT: Overruled.

MR. LINDSAY: Same exception.

A. I told him I was putting up the tanks and getting ready to put in the mash, and we went over and got the sugar from Kirkorian's father. They said, "Hurry up, so we will get some returns."

Arkalian made other visits to the Foss ranch. He came up about the middle of December, he and Zone Kirkorian, and looked over the situation up there, but they did not go inside the building where we were working.

Q. Was anything said at any time in any of these transactions as to the interest of Kirkorian and Arkalian in the business?

This question was objected to by the defendant Arkalian, on the ground that it was leading and suggestive and irrelevant and immaterial—reprehensibly so. The asking of the question by the United States Attorney was assigned as error. The objection was overruled, whereupon the defendant Arkalian, through his counsel, excepted.

A. Yes, sir.

(Testimony of Alexander Stumpf)

Arkalian, Kirkorian and myself were in Kirkorian's room at the Sequoia Hotel. Zone Kirkorian said, "Now, D. Arkalian and I, we are going in and take \$1500, that is, half interest in the concern." The other half is mine. That was said in Arkalian's presence. The understanding was that I should have half the business and Kirkorian and Arkalian the other half. I did not tell them that Coates owned an interest in the business. As a matter of fact, at that time Coates and Brix still had their investments in the business.

Arkalian made visits to the ranch after that. He and Zone Kirkorian came up and brought up some blankets to the ranch. We had to have some blankets for the men to sleep on. Arkalian said he could get the blankets, and Zone Kirkorian brought the blankets. Arkalian did not come up on that trip. We purchased a burner for the still from the California-Fresno Oil Company. It was a gas burner. I bought the burner.

Stumpf had a conversation with Coates and Malter regarding the moving of the stuff from the Caruthers ranch.

Q. And what was done, what was said about that?

A. Well, they thought it was all right to move it off.

* * * * *

From the Coates ranch the equipment was moved to the Walsh place by Andreas.

From the Caruthers ranch the equipment was moved to the Walsh place. It was subsequently moved up to the Foss ranch. The Jap, Hatta, hauled it up. On account of the cold weather the mash did not ferment properly, and I told Arkalian and Kirkorian that we would have to

(Testimony of Alexander Stumpf)

board up the sides of the barn and make it close and put in enough heat to ferment the mash. Arkalian said he would get the plaster board and the two-by-fours and nails in order to board it up. Zone Kirkorian, D. Arkalian and myself were present at this conversation, in front of the Hotel Sequoia. It was in December, 1930.

Next morning I picked up Kirkorian at the hotel about 7 o'clock. We drove to Arkalian's ranch and met him there. We took his Ford truck, went over to Reedley to the lumber yard and picked up the plaster board and came back to the plasterer's and picked up some two-by-fours. Then we went over to the ranch house and picked up some nails. Then I drove on up to the ranch. When I loaded the lumber at the lumber yard, Arkalian was there, and so was Kirkorian and myself. And I then hauled the plaster board up to the Foss ranch in Arkalian's truck.

I bought pipes and fittings for that still. We bought them here on "O" Street, somewhere. Zone Kirkorian paid for them. The three of us went over there, Arkalian, Kirkorian and myself. I took the pipe fittings up to the ranch. Proctor and Kenney and myself did the work of putting up the plaster boards.

I got gas on the Arkalian ranch to take up to the Foss Ranch. That was in December, 1930. Kirkorian and Arkalian and myself met in front of the Sequoia Hotel and took a little ride in my car, and we discussed the Arkalian ranch in the evening. That evening in my car I got some gas at the Arkalian ranch. I got three drums, about 165 gallons. I took that gas out to the Foss ranch in a Cadillac touring car. Arkalian was there when I got the gas. He did not go with me up to the hills.

(Testimony of Alexander Stumpf)

The still was there about three weeks before it was dismantled. After I took the gas up, Arkalian was up there. The occasion of his going up was to see what the outcome of it was up there. I had a talk with him on that occasion. Zone Kirkorian and Arkalian came up both times together. We went into the barn and I showed them how the boiler and the plaster board was put on and how it was set up and what difference it made in temperature. They left the ranch shortly after that. Afterwards I saw Arkalian on and off, about every other day. He went back to the Foss ranch again after that. Kirkorian was with him on this trip. We discussed the matter of fermentation, because the stuff was not fermenting very good. They stayed about ten or fifteen minutes. Arkalian was up there numerous times.

I never saw Mr. Coates and Mr. Arkalian there together. Neither one of them ever told me that they had been there together.

After that we all got in a squabble up there. I mean Arkalian, Kirkorian, Coates, Malter and myself. I met Coates one day out at Malter's house. I told him that I was through with the outfit, that I did not want anything of it any more, and whoever they wanted to take possession of it was all right with me. So we argued around there quite a while, and Coates said he would take a man up and he would run it for us. I said all right. He said he would bring up the man Saturday afternoon. I went up and Coates came up with Olson. That was in January, 1931. Coates and Olson came up together. He said he brought up Olson to look the plant over and see what we had on and I should show him what there was and

(Testimony of Alexander Stumpf)

what to do. Olson was going to take possession and run it. We went into the barn and they looked it over, and Olson tasted the mash, dipped his finger into the vats to see how the mash was, and looked over the still and everything else. He said, "Everything looks all right." When we came out of the barn Proctor came up and said, "Stumpf, I think we have been here long enough. Before we run the still now, why, we want some money." I said, "The boss is up here now, and I will tell him about it and he can see you." I went and told Coates that. Coates refused to put up any more money. He refused to pay. He said, "Run the stuff and then take the money out of that." I should judge Coates and Olson stayed on the place about half an hour that day. Then they came back to town. That night I talked to Coates at an apartment house where he was staying in Fresno. Kenney was present. I said that the best way to do was to pay the boys, because they wouldn't run it until they got their pay. Kenney was kind of sore, he wanted his money, and Coates refused, so Kenney and I left. I never talked with Coates after that about the matter.

After that I talked with Arkalian about the matter. I was on Fulton Street. Ed. Nichols, the detective, said, "Come up in my office. I want to see you once." I went up, and when I got there he took me in a side room. While in this room I heard Arkalian talking in another room. He said to Ed. Nichols, "I will give you \$500 in cash if you can get that still back by tonight for us." The only time I saw Nichols was when Nichols came up and opened up the door, and I saw Nichols when he took me over to the other room. Arkalian said, "I have got to have that

(Testimony of Alexander Stumpf)

still back by tonight." He says, "If you will go and get it, why, produce the still back tonight, and I will give you \$500 in cash."

I talked to Arkalian about that matter afterwards. He came to my house and said, "Well, what are we going to do about that matter out there?" This was some time in January, of this year. Nobody but Arkalian and myself were present. At this time he asked me to get my brother and hijack the still. He said that when it was hijacked there would be no evidence. I talked to Arkalian again once after that. That was also in January, and at my house. Arkalian and myself were present. At that time Arkalian again wanted to know why I didn't go up and get the still and have it over with. I told him I was not going to do it. I told him to go and get it. After that I had no more conversation with him about the business.

After I brought Coates the sample of alcohol in the mayonnaise jar, I had other conversations with him. We had conversations practically every other day. He put up money on different occasions. All together, over the entire period, in the aggregate, he put up around \$1700 or \$2500. I don't know the exact figures. I never kept tab of it. After I gave him the sample, Coates was out to the Foss ranch at least four times. That was in December, 1930.

Brix terminated his connection with the matter. Malter and myself went over to the Brix Service Station and we met Mr. Brix. We had a little trip into San Francisco together, the three of us, and right after that trip, why, we went over to see Mr. Brix, so we went into his private office, and we was talking about it, Brix said he wouldn't

(Testimony of Alexander Stumpf)

put any more money into the business until we could show him the progress of it. After that I never again took up with Brix the matter of putting any money into it.

Brix sued me for \$150 on the note I had given him. Afterwards I had a talk with him at his service station. He told me the suit was a mistake by his attorney, that he would see that it was fixed up. So he gave me a demurrer. My attorney, Myers, handed me the demurrer. Myers was my attorney. He gave me a copy of the demurrer. There was no more conversation between Brix and myself about that debt. The matter just stood there on demurrer.

I was the manager of the still business. I never registered this still with the Collector of Internal Revenue of this district. I never got a permit from the Director of Prohibition, or any Government official of any kind, for the operation of it. I never gave a bond for operating a still or engaging in business as a distiller. To my knowledge, none of these requisites was ever complied with by anyone.

The still was taken up to the ranch in sections. I took part of it up. Some of it was taken up by Kenney. I had nothing to do with the dismantling of the still. I don't know of my own knowledge who did. I never saw the still, or any part of it, after it left the ranch until I saw it here in the court-room. I had nothing to do with the dismantling of the still.

Cap Olson was taken up by Coates to run the still. He didn't run it, he didn't stay. Cap Olson's visit was after the sample of liquor was distilled. Proctor, Kenney and myself distilled the liquor, that is the liquor I brought down and gave to Coates.

(Testimony of Alexander Stumpf)

CROSS-EXAMINATION

Heretofore I was convicted of two felonies against the United States Government. On one of them my sentence expired July 18, 1930. After my release I worked for the Warren Refining Company, of Richmond. I worked for them two months. I was working for them when I met Ted Brix in 1930.

I previously pleaded guilty to this charge here. I pleaded guilty to the first count and the fourth count of the indictment.

Q. Well, you are testifying just as a citizen doing his duty, is that your idea?

A. Yes, sir.

Q. And nothing has been offered you to do it?

A. No, sir.

I met Brix about a week after I got out of jail, at his service station. He told me that he and Malter had a small pot out here and they had a man manufacturing brandy for them. When I asked Brix where the pot or still was located, he said, "You will find out later on."

When Malter and Brix and myself came to the agreement to operate a still and the money was put up, it was agreed there should be nothing in writing, there would be no memorandum, there would be no receipts so that they could be traced back to any of us. I did put my signature to this promissory note dated April 13, 1930, for \$150. Notwithstanding our agreement that there should be no writing, I signed the note for \$150, payable to Theodore Brix. My wife also signed the note. She was not present at the time the agreement to operate a still was discussed. When I was sued on this note I put

(Testimony of Alexander Stumpf)

in a demurrer. I told Lawrence Myers, the attorney, about the case, and he told me to come back, and when I came back he handed me the demurrer. I signed the demurrer.

I always made some memorandum when I paid out money. I paid out money and made memorandum of it "numerous times, most of the times he (Malter) was with me." When it was paid out, he would slip me the money and I would pay it to the other fellow. I did not give receipts or memorandum in writing.

With reference to Arkalian and any dealings that I had with him, Ted Brix's name was never mentioned. He had no connection whatsoever with Arkalian. Ted Brix had no connection with Mr. Coates in this enterprise. And he had no connection with the defendant Kirkorian. I never mentioned his name to Kirkorian during all this enterprise. I never mentioned the name of Ted Brix to Mr. Proctor. I never mentioned the name of Ted Brix to Mr. Kenney.

Arkalian first approached me on a proposition concerning narcotics. I told him that was not in my line. I didn't ask Brix at any time to let one of his airplanes be used for a trip down to Old Mexico to haul back narcotics across the line, and I didn't guarantee him \$48,000 for one trip. I had no conversation of that kind with Ted Brix. I didn't offer Ted Brix \$4 a gallon for every gallon of alcohol hauled from Stockton by airplane. I made no such proposition as that.

At this point Defendants' Exhibit B was introduced in evidence on behalf of the defendant Brix.

(Testimony of Alexander Stumpf)

I never talked during the Summer of 1930 to anybody about putting money into a grape concentrate deal. I went to work for Malter in the grape concentrate deal about January, of this year. I worked for him a few days.

I do not know how much Coates contributed to this still. I don't know the exact amount. I was supposed to be the manager of the enterprise, but I didn't know that. I know just about how much Arkalian put in. I don't know the full amount, he didn't put in any cash outside of the lumber and the materials. I don't know how much that amounted to. Kirkorian put in \$1000. I don't know the exact amount Coates put in. I said between \$1700 and \$2500 yesterday. To my knowledge Malter didn't put in anything. I testified that in the first meeting Malter put up \$500 and Ted Brix put up \$500 I seen that money, but as far as I know of he didn't spend it, or anything else. Well, yes, he put it up. In all I don't think over \$3500 to \$4000 was contributed. I got \$1500 from Kirkorian, \$1700, between \$1700 and \$2500 from Coates, and Brix put up \$1000, and that all makes \$4200, even if I counted the \$1700 instead of \$2500 for Coats, but I don't believe there was over \$4000.

Q. Well, you have got \$1500 for Kirkorian, \$1700, between \$1700 and \$2500 for Coates, and you said Brix put up \$1000, that makes \$4200, even if I counted \$1700 instead of \$2500 for Coates.

A. Well, I don't believe there was over \$4000.

I don't know how much the still cost. I was manager. I don't know how much was spent for it. I don't know how much was spent for labor. I never did pay Kenney

(Testimony of Alexander Stumpf)

a cent. He was paid some. I bought some cigarettes and grub, and so on, down the line. I didn't pay him in cigarettes and grub, but some of them was deducted. I don't remember how much was paid. I don't know that Proctor was paid anything. There were no other men that I know of who put up money besides Coates, Kirkorian, Arkalian, Brix and Malter. Hatta was paid. He was supposed to be paid. I did not see him paid and did not pay him myself. I didn't know that he was paid. Olson was paid some.

After Ted Brix told me that he was through with the thing I saw him many times. We never met about this enterprise.

Q. By MR. CURRAN: And at that time and place you saw and were in the room with Earl Fenston, Lawrence Meyers and this defendant Ted Brix, were you not?

A. Yes, sir.

* * * * *

Q. Yes. You meant that you would take the witness stand and if you told the truth Ted Brix would be acquitted, didn't you?

A. Yes, sir.

At this point Mr. Savage took up the cross-examination of the witness on behalf of the defendant J. L. Coates.

I have known Mr. Malter since 1930, just before I entered into this arrangement. I never knew him before. I am 31 years of age. In the beginning the arrangement between Brix and Malter and myself was that Brix was to help put up the money, Malter to put up an equal amount and we were to go three ways on a still. Malter was to be treasurer. He was to handle all the money. The

(Testimony of Alexander Stumpf)

arrangement with reference to Mr. Coates' participation was altogether different. Under the arrangement with Mr. Coates, he was to give me his money. When Malter, Coates and myself were together, we had an understanding as to who was to handle the money in the Coates deal. The meeting took place at the Malter ranch some time last year, somewhere around October. Coates was not particular as to who was going to spend his money. I never saw Coates before. When I met him I handed him a card of the Warren Oil Company. I said I was traveling for the Warren Refining Company. I handed him my card. It was agreed I should handle his money. Coates said, "Well, who are we going to turn this money to?" Malter and Coates had a little conversation in my presence and they agreed to turn the money over to me. They said I should go to San Diego and close up the lease.

Q. Just a minute.

A. On the place.

Q. I want the conversation and I am going to ask that the witness—

THE COURT: No, Mr. Savage, he is giving the substance. As I understand the witness, he is giving the substance of the conversation between the two, is that correct?

A. Yes, sir.

There was quite a bit of conversation. I don't remember the whole. I don't know every word of it. Anyway, it was agreed that I should be the treasurer of the Coates-Brix—I mean the Coates-Malter-Stumpf combination. That was an entirely different thing and a separate deal from the Brix-Malter-Stumpf combination. I took all the

(Testimony of Alexander Stumpf)

money and became treasurer. I kept no record of any of the expenditures.

Q. Well you had this agreement with Mr. Malter on the Brix-Stumpf-Coates, Brix-Stumpf-Malter little combination No. 1, we will call it; you did not have any such understanding with No. 2 combination?

A. No, sir.

Q. Did you keep any memorandums at all?

A. I did not.

Q. Did Mr. Malter?

A. To my knowledge, he did, yes.

Q. He did, of everything that was spent?

A. Yes, sir, not everything.

Q. What?

A. Some of it.

To my knowledge Mr. Malter kept a record. He kept a record, but not of everything that was spent—some of it. There was only once or twice when Malter gave me money. When he gave me money, he did not say, "Put this money up."

I knew whether I was getting Brix's money or Coates' money or Malter's money, because Coates handed me his and Malter handed me his. In the beginning there was an understanding that Coates and Malter would play ball and I would be the manager, and Coates and Malter and myself were going to split three ways. That was the deal in the Coates combination. Mr. Malter was to put up half the money and Mr. Coates half the money. I knew all the time that Mr. Malter never put up any money. We were fooling Coates. Coates believed Malter was putting up 50-50 all the time. We had two deals, one deal with

(Testimony of Alexander Stumpf)

Brix to start with, and another deal with Coates to start with. Malter and myself were in all of them. We kept no separate record or accounting at all.

I met Coates for the first time in October, 1930. I met him on the street and out of a blue sky. Malter and myself were driving along the street and he says, "There goes Coates; he is interested in some kind of a proposition like this. Let's touch him up for a little money." Malter stopped and talked with him a little bit. I did not meet him then. Malter and Coates did not go into the Bank of America that I can recall. Malter came back and reported to me, "I think he is all right; I think he will put up some money." Malter explained to me what he meant when he said Coates was interested in a proposition of this kind. He said in a booze deal. He did not mention a grape concentrate deal. I heard that mentioned many times, but not at that particular time. I heard it on the street, but not between us before this indictment. I never heard Malter mention about a grape concentrate deal with Mr. Coates. I met Mr. Coates out at Mr. Malter's house a little later.

The arrangement was that each one was to go 50-50. It was agreed that those two furnished the money. I was not supposed to put in a thing. I was going to get a third. At that time I was not to get any salary. I was to get expenses. I was never to get a salary in the Coates-Malter combination. It was just a split on the profits. The Coates-Malter-Stumpf and the Malter-Brix combinations never did get together. They were always kept separate. I never told either of them that I was building stills. The deal was that Coates and Malter were supposed

(Testimony of Alexander Stumpf)

to put in the money 50-50, and out of the profits I was supposed to get a third.

After this little talk Mr. Coates seemed to become very enthusiastic. We had already bought the tanks from the Compress Company when we got Mr. Coates into it. We had had those probably 30 days. I don't believe we told Coates anything about having the tanks. We bought three of the tanks with Brix's money, Brix's second \$500. Those tanks cost about \$42 apiece. Malter and Coates went downtown and came back with \$500 apiece in cash. They came back to the Malter ranch. Each one of them handed me \$500. Malter did actually give me \$500. I did not slip it back to him on that day. Later on he got it back. After Coates and Malter came back from San Francisco, Malter asked me, he said, "You better give me some of that money." He said, "Give me my \$500 back." So \$500 was all the money that I had. That was the money that Coates put up, the real money. The other was just make-believe.

Then we continued to talk about locations. We had talked about locations before. I said the Smith ranch. That is out behind Clovis, about six or seven miles. There are a couple of vineyards right close. Most of it is grain. There are vineyards pretty much from there on into Clovis and clear on into Fresno.

When we started in we agreed to start in right away, start in operation and get busy and do something. We were going to do it very quickly. We meant to start manufacturing alcohol. As to how long it takes to make a still that depends on who is making it. I don't know how long it would take a real mechanic, working in a

(Testimony of Alexander Stumpf)

legitimate way, to make a still. I never made one. I guess it would take half a dozen days. I told Coates it would take 30 to 40 days, maybe 50 to get to operating.

It was Malter that first suggested going to Coates and trying to get some money out of him.

Q. It was his own thought. Did Malter suggest himself that we gip Coates to the extent that "I will pretend to be putting in 50-50 and mine will be slipped back to me under cover and we will use Coates' money?"

A. Yes, sir.

Q. Malter suggested that too?

A. Yes, sir.

Q. Did Malter tell you that he had known Coates all his life and had gone to school with him, was a friend of his, gone to the house?

A. Yes, sir.

Q. And lived with him? And that did not bother you at all, I presume?

A. No, sir.

I went to San Diego and spent \$40. I saw Smith when I was down there. Smith was undecided about leasing the ranch. I told Smith we wanted to rent the ranch as a cattle ranch. It must have been a week or so thereafter that I again spoke to Coates about money.

I did not keep Coates advised as to all that I was doing, some things, but not all. I never told Coates that Olson and myself were going to build this still. Cap Olson and I never built this still. We never agreed to build the still. I didn't tell Coates that Olie Olson was building a still for me. I didn't tell Coates who was building a still for me *building a still for me*.

(Testimony of Alexander Stumpf)

We used some of Coates' money in building the still that Olie Olson was building for me and Brix and Malter. The deal between me and Brix and Malter was an entirely different deal from the deal between me and Coates and Malter, but we did use some of Coates' money in the deal between Brix and Malter and myself. The deal dropped with Brix at that time. It dropped about 40 or 50 days when we first started. Brix had clear run out on me on this job before I called Coates in on this deal.

I don't know whether the statement in the indictment that Coates paid \$500 in September is correct, or not. I don't remember the dates and if the \$500 was put up by Coates September 19, 1930.

Q. Well, supposing the date when this \$500 was put up was September 19, 1930, then you are all mistaken about Brix being out of it at the time Coates first came in, is that correct?

A. I don't remember the dates.

Cap Olson never worked on the still. Olie Olson didn't finish the job of constructing the still on the Malter ranch. First the material was put up there between Brix, Malter and myself. That was the latter part of August or September, somewhere in there. Anyway, Brix stayed in the deal 30 or 40 days after that, maybe 50 days.

I went out to the Fresno Compress Company with Hugo Malter to buy those tanks. That was Brix's money at that time. I don't remember the date. I bought those tanks when I came back from San Diego. We went over there and bought five tanks. The capacity of those tanks was 7200 gallons each. You can use those tanks for anything, for water, or anything. They are the same identical tanks

(Testimony of Alexander Stumpf)

that you would see in any grape concentrate or in any grape juice business. You can use those tanks for anything; for water or anything. I discussed with Mr. Malter and Mr. Coates the capacity of these tanks. We would need almost 40,000 gallons in tankage to turn out 250 gallons a day. It takes quite a bit of mash. You have to wait for fermentation. Sometimes you have to wait. It all depends on the weather and the building you've got. It would take longer than two weeks in the month of November. I bought five 7200-gallon tanks, and they were hauled out there to Malter's place. Brix had already bought three. They cost about a cent a gallon. It will all run up to about \$350 or \$400.

I told Coates that I had put up a deposit on a still that I was going to buy in Los Angeles. I didn't tell him how much it would cost. I told him that would depend on the capacity, but I did tell him I actually put up a deposit on it. That was not the truth. I told him I was going to get a still. I told Coates this less than 30 days, about 15 days, after he had put up the first \$500. The conversation occurred out at Malter's house. Hugo Malter was there. We were in the front room. I told Hugo Malter the same thing. He was present. He knew it was a fake.

After Coates put up the \$500 the first time I got more money out of him later on. It must have been 7 to 10 days after, Coates gave me the next money. He didn't ask me what I did with the first thousand. I never said a word. I told him about the trip to San Diego and that it cost \$40, and I told him that we bought some tanks with the other thousand. I told him I wanted the next money to keep the project agoing. Hugo Malter was with

(Testimony of Alexander Stumpf)

me. Hugo said, "Well, I am willing to put in more." Malter and Coates decided among themselves as to how much more they would put in. The understanding was they would keep on putting in money until it was completed. Neither one of them said anything about what had happened to the first \$1000. I guess all Hugo would have to say to Coates was, "Just give me \$500." When Hugo told them he got the money without any explanation, because he always got the money.

I told Coates about the Caruthers deal before I got the first five hundred. He seen the Caruthers place. He seen the Foss ranch before he put in any money.

Q. He never—he never was out to the Caruther's Ranch but always went far, wide, and around it?

A. Beside the place.

I told the Caruthers man I wanted that place for farming, raising horses, turkeys, and so on. I got the name of the party. It was Morton. It was in October, some time. I never told Coates what the still would cost. I sent tanks out to the Caruthers place. Andreas hauled the tanks out, and he hauled them back. That was some time in October. Before he hauled them out, I went down and bought this truck from a man named Walsh. Malter was along. Mr. Walsh was there and Mr. Coates. Mr. Coates said, "We will buy this Chevrolet truck." I don't remember the price. I believe it was four and a quarter, something like that, or five and a quarter. It was a used truck. Malter said it was O. K. with him. It was agreed between Malter and Coates and myself that we would use the truck to haul, that we would use the truck just for transportation, hauling tanks and equipment and alcohol.

(Testimony of Alexander Stumpf)

We didn't tell Walsh that. We weren't going to tell Walsh anything. I knew a truck used for hauling alcohol could be confiscated. Walsh didn't ask anything about what the truck was to be used for. I don't remember who paid the \$100 on the truck, whether I did or Coates did. I was treasurer of the organization and had the money, but I don't remember who paid it. The truck was to be part of the Coates-Malter-Stumpf combination, part of the company's property. Neither I nor Mr. Malter ever made any claim to the truck. I did not hire Andreas but directed him and paid him for labor. I don't remember the amount, I kept no record of it. I paid him cash. I took a pressure system besides the tanks out to Caruthers. The pressure system cost \$125. I bought it from a man named Kerr, whom I had known for a couple of weeks. Malter introduced me to Kerr. Malter told me that Kerr could be trusted and he knew how to set up a still.

I told Mr. Coates that I had bought a water system; that I would have to have it for a still. I never sent anything out there that looked like a still. There was nothing of any still sent to that place, nothing at all. I told Coates I was getting an electric burner out there, and I told him that I had made arrangements with the water company to be connected up with power and that I was getting an electric burner. I ordered an electric burner. I don't remember what it cost, but I think about \$22.50 apiece. There must have been six or eight of them. The burners arrived and I saw them at Malter's house. I gave Malter money, and I presume he paid for them. I don't remember how much money. I don't know whether Malter made a record of it. We never used the burners

(Testimony of Alexander Stumpf)

out there. I don't know what became of them. I guess Malter has got them.

I did not tell Coates that Kerr was competent to build a still. I did not tell him Kerr was a dead shot. It was never mentioned in my presence. I never heard of his being a dead shot with a revolver. I never knew that. I told Coates that Kerr had been in the bootlegging business, and I felt sure after talking to him that we could trust him. Kerr had told me that he had been in the bootlegging business. He said he was handling, peddling small bottles. Kerr worked for me about 30 days. He was to get \$5 a day. I paid him in full. Besides Andreas and Kerr, a man was working out at Caruthers, named Cannon. He was supposed to live on the place and take the lease of the ranch. He was the man that actually took the lease. I told him what I wanted the business for, and he said all right. I was to pay him \$5 a day until the plot started to going; and then I was to pay him \$10. I told Coates I had abandoned the Caruthers deal. I looked for another location, and told Coates I had found it. The things were brought in from Caruthers before the Foss contract was signed. I told Coates about the Foss ranch some time in December. We took him up there and showed him what was up there. Malter was with us. That was after the Foss deed was signed. The tanks and all were set up at the time that Coates first went to the Foss Ranch. The mash was in. I showed Coates the still some time in December. To my knowledge, from September clear through to December Coates had never had a look at the still, and yet he was down at the Malter place almost daily. He lived out there for awhile with Malter.

(Testimony of Alexander Stumpf)

But neither Malter nor myself ever told Coates that the still that he was in on was right there in the Malter library. I didn't tell him it was there because I was afraid he might let it out. We trusted him but he done a lot of talking. We let Brix know where it was. We never told Coates at all about Olie Olson having anything to do with the still. I don't know whether Coates ever knew that Olie had anything to do with it.

When we moved off the Caruthers place Coates wanted an accounting of all this money, wanted to know how much money he had spent. I don't know the exact date of this. We had an accounting with him. Coates and Malter were there when this little yellow sheet was made. I got this little sheet off Malter's desk. He has a lot of sheets like that there. It was his own letterhead, his own letter stationery.

Q. Hugo Malter's?

A. Not Hugo's, but Malter , something like that.

Q. Who was

A. Stationery.

Q. Yes, but what was the business, Malter

THE COURT: Strike that out as immaterial.

MR. SAVAGE: Well, if the Court please, I am going to ask for an exception, unless—may I have the privilege to make the point on that? I want to show that this witness knew all about the syrup concentrate deal, put in evidence the Malter Syrup Concentrate deal.

THE COURT: The ruling is made.

Whereupon the defendant Coates, through his counsel, duly excepted to the ruling of the court.

(Testimony of Alexander Stumpf)

I never heard Malter mention in the presence of Coates the Malter business.

Q. What was that business?

A. I don't know. All I know is that it was a winery years ago.

THE COURT: That is the question that the Court just said is immaterial, is it not?

MR. SAVAGE: I did not so understand.

THE COURT: Is not that the identical question?

MR. SAVAGE: Oh, not at all.

THE COURT: What?

MR. SAVAGE: Not at all.

THE COURT: Well, it is the Court's view that it is the business of the Malter Moro Company, is it not, and that is your understanding of it, Mr. Savage, is it not?

MR. SAVAGE: I beg your pardon, I did not have that understanding. I wanted to know whether if he knew what the Malter Moro business was.

THE COURT: Well, that is precisely it. I said that I regarded that as immaterial a moment ago. Now, you are asking it again, aren't you? Strike it out.

MR. SAVAGE: Well, he has already testified that he never heard anything said about a grape concentrate business, and we know that this Malter Moro was a grape concentrate business, and I think it is perfectly proper, and I except to the ruling of the Court, and note an exception.

I don't know where Malter kept that statement of the expenditures in this conspiracy, whether he kept it in a drawer or in his pocket. I believe there was only one page of it, written in pencil on just one side. I don't remember the last time I saw the statement.

(Testimony of Alexander Stumpf)

Either in October or November, Coates wanted to know what had been done with this money. I kind of called off what I could think of that was expended. I don't know what the amounts are at this time. One was \$375 for rent. I don't know the amount, but I paid it. It was for the Caruthers ranch. I gave an item of \$150 for light and power. There was a deposit on the place for light and power. I don't know how much. I don't remember. I told him I had spent \$100 for tanks. I don't remember what it all was. I wrote the items down on a card of this kind. I had an item of \$100 for a truck, and the water system was \$150, and the tanks were \$210, five of them. This was money that we had spent up to that time. We had never used any still up to that time. Gas and oil bill were for my automobile. I put down an item for \$50 for gas and oil.

I did not tell Coates that any of these expenditures went into a still. Then there is \$1250 for machinery.

At this point there was offered in evidence as Government Exhibit 4 the paper or instrument from which the witness was reading the figures already testified to. The offer was objected to by the defendant Coates, on the ground that no proper foundation had been laid therefor.

Thereupon, upon questions propounded by the Government, the witness stated that he saw defendant Coates make the memorandum of the items on the card or paper, on a similar card or paper; that he saw Coates write on a card at the Malter house. It was a card like the one offered in evidence.

By MR. McNABB: Q. Mr. Stumpf, did you see Mr. Coates make the memorandum of the items that are on that card, you have seen the card, or on a similar card?

(Testimony of Alexander Stumpf)

A. On a card of that kind, yes.

Q. And he took those down at whose suggestion, who was there?

A. At his own suggestion.

Q. At his own suggestion. And you saw him write those items on a card at that time, did you?

A. Yes, sir.

* * * * *

Q. And on a card identically like that yellow card that you see there?

A. Yes, sir.

MR. McNABB: We offer it in evidence if the Court please.

THE COURT: Well, were they the same items or do you recall the items that are on that card now?

A. Yes, I believe they are the same items that were called for.

MR. SAVAGE: Well, I want to object to the admission of that in evidence, and also, to the method of examination of THIS witness at this time.

MR. McNABB: Well, you brought it out, Mr. Savage.

MR. SAVAGE: I had a perfect right to bring it out in cross-examination, because he said Coates said—

THE COURT: Proceed with the examination.

THE CLERK: Is that admitted, your Honor.

THE COURT: Yes.

MR. SAVAGE: Note an exception, please.

The item of \$1250 for machinery was so made because we never used the word "still". Up to that time we had never told Coates that we had a still or were going to buy one or had an option on one. We never told him

(Testimony of Alexander Stumpf)

about a still. He knew that we had bought a still. We told him so. We had not bought a still. The \$1250 item was for copper for the still and for labor, and so on, for the building of it. I say that he knew that we had bought a still, that we bought a still. No, I do not say that he knew that we bought a still. We told Coates we bought a still because we did not want him to know that Olie Olson was building one.

Q. By MR. SAVAGE: Was there any other still mentioned?

A. Yes, sir.

Q. Which one?

A. The one that is over here.

Q. Why you just told me that you did not mention that, would not tell him about it.

A. It was mentioned up on the Foss ranch. He seen it up there.

Q. Well, you did not take it up on the Foss ranch until up along in December, and you told me this conversation took place in April.

A. It was for to buy copper and so on to build a still but we never told him, we told we had purchased the still some place.

I don't know whether I told him about how much copper had been bought.

I went up to the Foss ranch with Coates. I came out to Malter's house, and Malter and Coates were together. Coates said he would like to see that equipment once. I said all right, that we would go up. I don't remember the exact date. It was before Christmas. It was maybe 10 days after we bought the Foss ranch. The still was

(Testimony of Alexander Stumpf)

all set up there at that time. We went up at night, in my car.

We did not tell Coates that anybody else had any interest in the still at that time. The next time Coates went up with me, it was about a week later. He wanted to see the outfit again, see how it looked about that time. We came right back that time. On the way up and back we had conversation, but I don't remember what we talked about.

After that Coates took me up again one Saturday afternoon. At that time the still was not being operated. We had not yet started to operate it. Coates and I went into the barn and looked at the mash, and so on. I told him in a few days, or maybe tomorrow, we will start the pot.

I was up there again when Coates and Olson came up. Coates told me he was going to put a man in charge to run the place. I said I was dissatisfied and that I would give him everything. I told him that out on the G. H. Malter ranch. That was a day or so before he took Olson up. On that trip we took them into the barn and showed him everything. Cap Olson examined the mash; looked at the equipment. Olson said that as far as he could see, it was all right. He said that the still was all right and that everything was all right. When we went outside, Slim Kenney came up to me and said that the men wanted some money before they'd run the pot. Proctor was there.

I took a sample of the alcohol that was run. I stood there and watched it. Jim Proctor and Slim Kenney and myself ran it. I don't remember whether Olie Olson was

(Testimony of Alexander Stumpf)

there, or not. I told Kenney and Proctor that Coates was one of the parties. Coates was not there when I told them. I did not tell Coates the sum but told him they worked so many days at so much a day.

Q. What did Coates say about paying them?

A. He would run the stuff first and then have the money."

We got a very little alcohol, a little bottle full, a mayonnaise bottle full. I brought it down to Coates. It was alcohol. Coates drank some of the pure alcohol.

In January, after this trouble, I had a conversation with N. Lindsay South. I said to South that Coates was up there last night and released me off the ranch, and Coates is all blowed up now and the men want their money, and I says there is a hell of a squabble at that time. I says maybe you can put Coates, if we could at least get straightened up and quick, but as far as dead-shots and shooting anybody, there was never anything mentioned around. Lindsay South said he would see Coates about it. I saw South again on the following Monday morning, at his office. Mr. South knows practically the whole deal as well as I do.

After that I went to Frank Curran's office and asked Curran to make a demand for \$2380. I told Curran that the men have so much money coming, and I demand so much for my part. I says that it will be a tough time getting it, but we could write them a letter. He said "We might be able to scare him into it and have him pay up." I did not hear the letter dictated. Mr. Curran said that he would write the letter. That is all I know. I never saw a copy of it.

(Testimony of Alexander Stumpf)

I was born in Fresno, and lived here all my life; am 31 years old. The two crimes of which I was convicted, as I have testified, were the only crimes of which I have been convicted. Since my arrest I have spoken to officers of the Government. I have spoken to Mr. Ohannesian and Mr. Whitfield and other agents.

REDIRECT EXAMINATION

Q. By MR. McNABB: You testified that you introduced Mr. Coates to Kenney and Proctor, did you not?

A. Yes, sir.

Q. Now I will ask you what name you introduced Mr. Coates to Proctor and Kenney under.

MR. SAVAGE: Just a moment. I object to that as not proper redirect examination.

THE COURT: Overruled.

Whereupon the defendant Coates, through his counsel, then and there duly excepted to the ruling of the Court.

A. Why, I do not remember under what name, but he gave me some name to introduce him to Proctor and Kenney.

MR. SAVAGE: Just a moment. I ask that that answer be stricken out as the conclusion of the witness. If he wants to say what Coates said that would be conversation.

THE COURT: Overruled.

Whereupon the defendant Coates, through his counsel, then and there duly excepted to the ruling of the Court.

THE COURT: Did not introduce him under his own name?

A. No, I did not introduce him under his right name.

Q. BY THE COURT: You knew his right name?

(Testimony of Alexander Stumpf)

A. Yes, sir.

Q. BY MR. McNABB: Did you do that of your own volition, or did Mr. Coates ask you to do it?

A. Mr. Coates asked me to do that.

I pleaded guilty in this case some time ago. I pleaded guilty voluntarily.

Q. BY MR. McNABB: Has the Government offered you any inducement or immunity, or anything of that kind?

A. No, sir.

Q. BY MR. McNABB: By reason of your coming here to testify?

MR. CURRAN: Just a minute. I move that that answer go out until I can put in my objection.

THE COURT: It seems to me the presumption would be that everything *thing* was voluntary. And particularly with respect where the officers of the Government are concerned. It seems to me that would be immaterial at this time, and irrelevant and incompetent.

MR. CURRAN: Pardon me, your Honor. In all courtesy and deference to the Court, I want to take exception to your Honor's remarks that the presumption is that the plea would be voluntary and assign it as error prejudicial to the defendants.

THE COURT: Yes, you can have an exception to that.

MR. SAVAGE: On behalf of Mr. Coates, I want to ask for the same exception.

THE COURT: All proceedings under the law are deemed to be fair and regular.

(Testimony of A. J. Olson)

A. J. OLSON,

a witness called by the Government, after first being duly sworn, testified in substance as follows:

My name is A. J. Olson. I live in the vicinity of Fresno, and have lived here for 15 years. I am a brother of Olie Olson, the defendant in this case. I know Mr. Malter. I know defendant Brix. I met defendant Arkalian once. I don't know Kirkorian. The first time I saw Proctor was out in a room where I was waiting. I worked out with Proctor, but I never knew him, never knew that was him.

I met Brix about September, 1930. Malter was with him. I met him at my ranch. Malter introduced Brix to me and wanted to know where he could find a man to build a still. I think Malter asked the question. They were about three or four feet apart at the time. I saw Mr. Brix a week or ten days after that. Mr. Malter was with him at that time. I saw him in my yard. I had no conversation with him then.

When Malter asked me if I knew anyone who could build a still, Brix did not say anything.

I am acquainted with defendant Coates. I met him shortly before this case came up. I was introduced to him by Mr. Malter on my own place. I had not known Coates before that. There was no conversation that I know of on that occasion. I don't remember what they talked about at that time. I don't remember anything at all that I said to them, or that they said to me on that occasion. Of course there was some talking but I could not recall what it was. I never saw Mr. Coates after that until the time I went up to the still. At that time he came to my

(Testimony of A. J. Olson)

house and nobody was with him. We went out and took a ride. On the road going up Coates said something to me. We were not talking much about the still. When we got up quite a ways he told me he was going to show it to me. He told me he was going to show me the still and see if he got "gypped" on it. There was nothing else said on the way going up. When we got there we met Mr. Stumpf. He took Coates and myself in the barn and showed us the whole apparatus, tanks, still, the boiler, and mash. Stumpf said to me, "Well what do you think of this still?" I said, "It might be all right if it was put up properly, but" I said, "it will never run that way." What was wrong with it was that it was set up backwards. The whole business more than any part of it was wrong. I saw about 2000 gallons of mash. The still was in the barn on the Foss ranch. I went up on a ladder and put my arm down in the tanks and I got some on my hands and took it out and tested it and it tested like syrup. I guess it was sugar and water. Stumpf said it hadn't been working good because it was too cold. Coates was there when this statement was made. Coates did not say much of anything because he did not know much about it. He said "Can you make anything out of that?" I said, "No." "Well, there is nothing but syrup and water, and that is all you have got." Coates said, "Do you think that still comes from Los Angeles?" I said, "I don't know." "Well," he said, "Stumpf told me he got it in Los Angeles." He told me he paid \$2000.00. Nothing else was said at that time.

Stumpf came outside and an automobile tooted the horn and Mr. Stumpf went out and left us in a dark room in

(Testimony of A. J. Olson)

there and we stayed there for ten or fifteen minutes. We thought there was something up so we sneaked around and found doors and crawled through the hog pen and got out of there. I mean myself and Coates. We crawled over the fence and went up to the house. We went up to the house and something was said about something to eat. We had a bit and walked out to the gate and met Stumpf and then we walked out over the hill to the spring, and they were talking on the road and I was bringing up the rear a little bit. When they got to the spring there they had an argument. I don't know what they were talking about. They got into a battle royal. Then we started back. They came on back to the house and Stumpf asked Coates for more money. He said, "To hell with you, you don't get any more." So then Stumpf says, "Out she goes," and "Let her go" Coates says. I don't know what he referred to by "out she goes." Stumpf said that to Coates. I did not hear Kenney or Proctor or anybody else say anything at that time in connection with the still.

I know defendant Arkalian. I just met him the one time that he came to my house. Mr. Coates was with him. That was in February 1931. They came together and I had a little conversation with them in the yard. Coates said "I thought I was the only one in this game." I think that is what he said. Arkalian said that Stumpf was a rat, I believe.

CROSS-EXAMINATION

Of course if you run a still you had to make your own mash before you made the alcohol. I ran my arm down into this stuff and the most you could make out of it in the light of your experience was a little syrup. Mash is

(Testimony of E. Pusey Cain)

only a name. This mash was all sugar and water. In addition to this, if they were going to make whiskey they should have put corn in it and if they were going to make brandy they should have ground up some grapes and let it ferment. When it contains three or four per cent you get low grade stuff.

REDIRECT EXAMINATION

I have talked to various people about this case. I talked to Mr. Lindsay South, the attorney, about it and I talked to Mr. Savage, attorney for defendant Coates about it. They wanted to know if there was any alcoholic content in that sugar and water—that mash—and I told them no. That's all that was said.

E. PUSEY CAIN,

a witness on behalf of the Government, being called and sworn, testified in substance as follows:

My full name is E. Pusey Cain. I live on Peach Avenue, Fresno, California, have a ranch out there. I never made a lease on that ranch or negotiated for it with Mr. Hugo Malter or Mr. Stumpf. I got some tanks from Hugo Malter in October 1930. I did not haul these tanks to my ranch. I think a Japanese by the name of Hatta hauled them. I made an agreement with Hugo Malter for some tanks. He said, "I will get you some tanks." There were lots of them on the St. George but most of them were in use. I had been there for seventeen years. I have three, four tanks there at present. Originally I had seven or eight. I had control over them and thought they were all coming to me. Part of one is there yet. The others were hauled away in October or November by the

(Testimony of E. Pusey Cain)

Japanese and a white man whose name I do not know. I had no conversation with Stumpf or Malter regarding a still or leasing my property for the use of a still.

CROSS-EXAMINATION

One time Mr. Malter brought Mr. Coates around there. He and Coates and Stumpf. Malter and Coates and Stumpf were there. They looked around the grape concentrate plant I had there. I was introduced to Coates that day. I showed him around my plant. I was actually constructing a plant at that time for grape concentrate. This was not anywhere near the Malter place. I had an arrangement with Mr. Malter about furnishing him this for the grape concentrate plant. It was just a verbal agreement at that time. The agreement was to supply him with some tanks. He was to have no interest in the grape concentrate plant. I was going to put that up for the plant. The idea was that when these people came over they came over to buy a syrup plant that I was constructing the tanks for. I have operated a grape syrup plant since last October. Before that I was employed at the G. H. Malter place for about sixteen years. There was a grape syrup plant there. I ran that place. The tanks were the kind used for receiving grapes in grape concentrate plants. They were different sizes and shapes. I saw Coates over at the Malter place. There is a still in the grape concentrate plant at the Malter place. It is about four feet high. I bought that still. I never heard at any time any statement made by Stumpf, Malter or by Coates about Coates being interested in a still. I never heard Coates or Malter or Stumpf say anything about manufacturing alcohol. I heard them say something about

(Testimony of Wilbert G. Whitfield)

being interested in the manufacture or sale and distribution of grape syrup concentrate. Malter was engaged in selling concentrate. He bought some from me, and that was when he had a store on Merced Street.

WILBERT G. WHITFIELD,

a witness on behalf of the Government, after being called and sworn, testified in substance as follows:

My full name is Wilbert G. Whitfield. I am a Federal Prohibition agent. I held that position in Fresno in 1930. I was at the Foss ranch. Agent Clements and a special agent by the name of Graff were with me. I saw tanks and vats at that place. We took nothing from the vats, but I took a sample of half a gallon bottle of mash from the gravity tanks that was at the still location in the barn. I took it into my custody and took it back to the evidence room, to the Bureau of Prohibition. I retained possession and control of it since then. I gave it to Government chemist named Stribling. That is identical. Identical stuff that I took from the Foss ranch at the time I referred to. Nobody else had any possession or control over that after I took it from that time on until I gave it to Mr. Stribling, the Federal chemist. It has been in my possession and control from the time I seized it up to the present time. I took the sample and have had it in my possession ever since. This ferments after you get it and hold it. It was tested shortly after I got it in my possession. The date I turned it over is on the bottle. It was shortly after I got it, within a few days. When I got this sample from the tank on the Foss ranch the ranch was deserted with the exception of some Forest Rangers.

(Testimony of Fred D. Stribling)

It was practically deserted with the exception of some Forest Rangers who were patrolling there for fire. There was nobody on the ranch. I have no idea who put this liquid into that tank container that I took it from.

Whereupon the bottle of liquid mash was offered in evidence as an exhibit by the Government.

The offer was objected to on the ground that it was too remote, not connected with the defendants and not shown who put the liquid mash into the tank receptacle.

The objection was overruled by the court, whereupon the defendant Coates, through his counsel, then and there duly excepted to the ruling.

The bottle of liquid mash was thereupon introduced in evidence as Government's Exhibit 6.

FRED D. STRIBLING,

a witness on behalf of the Government, after being called and sworn, testified in substance as follows:

My name is Fred D. Stribling. I am a chemist. I have been in this line of work since 1921, I mean with the Government, this work. I have had this, Government Exhibit 6, in my possession before. I received it indirectly from Mr. Whitfield. He told me that there was some mash he wanted tested. I tested it. I found it to be mash containing 3.24 per cent alcohol by volume.

CROSS-EXAMINATION

I received the sample some time before April 17th. I failed to put the day on here. It might have been a week before. It was while I was here attending court. Mr. Whitfield told me he just received a sample, just brought it in. I made the test some time prior to April 17th.

(Testimony of Ferdinand Andreas)

Liquid like that, such as you have in that exhibit, changes from time to time, according to the conditions that surround it. It depends upon conditions and the amount of sugar present whether the alcoholic content would increase during a period of some months. It was fairly warm in the month of April. That would have something to do with the alcoholic content, provided there was enough sugar. I cannot tell from my examination of this specimen what the alcoholic content of this liquid was in the month of January 1931. I cannot tell what the alcoholic content was in the month of February 1931.

Whereupon the defendant Coates, through his counsel, by motion applied to the court for an order striking from the record all of the testimony of the witness Stribling upon the ground that the testimony was at variance with the allegations of the indictment, in that the charge against the defendant was conspiracy to possess and manufacture a still and not conspiracy to manufacture liquor, and that any evidence concerning the possession of liquor or manufacturing of liquor or alcohol was irrelevant and immaterial.

The court denied the motion, whereupon the defendant Coates, through his counsel, then and there duly excepted to such ruling.

FERDINAND ANDREAS,

a witness called on behalf of the Government, after being duly sworn, testified in substance as follows:

My name is Ferdinand Andreas. I live at Salinas. I went over there last October and stayed there until June. Then I moved back to Fresno for a couple of weeks and

(Testimony of Ferdinand Andreas)

I went back up there again. Prior to living in Salinas I lived in Fresno. I was born and raised in Fresno. At one time I was employed by Mr. Coates, one of the defendants in this case. I see Mr. Coates in the court room. I think I went to work for Coates in March 1930. I worked at a filling station, gas and oil, as a salesman. I worked there I think until September 1930. In September he put me on a different job. He asked me if I wanted to work for \$5.00 a day and I told him I did. Before that I had been getting \$90.00 a month. He said he was going to buy a Chevrolet truck and wanted me to drive it. I accepted the change from the station job to the truck driving job. I got a Chevrolet truck.

The next day he and Mr. Malter and Mr. Stumpf came out and they gave me a receipt for \$100 payment on the truck. They said the Chevrolet truck would be out that night. They told me that it would be out that night so they brought it all right and I signed a contract in the office there by Mr. Coates. They had the truck put in my name. They said they were going to start up a syrup plant and they wanted me to haul some stuff for them. They gave me no explanation as to why they put the truck in my name. I never asked why. I thereupon began driving the truck. Coates told me to take orders from Malter and Stumpf and if there was any come back, or if there was anything wrong that I didn't like I should come back and let him know because I was his employee. After that I worked driving the truck. The truck was kept at my place. I didn't work at the service station any more but I went over to fill gasoline and oil whenever it was needed. I did not pay for the gasoline and oil when I got it. Mr.

(Testimony of Ferdinand Andreas)

Stumpf was supposed to pay that bill. The first thing I did with the truck was that I went out and cut some alfalfa for turkeys and fed them. After that I hauled some pipe, we pulled out of a fellow's place and hauled it over to another place out here east of Fresno. I hauled some pipe and there was a motor. I hauled it out to the ranch I think it was the Kane place.

My next haul was some brick from a brick yard over to Mr. Kane's place. My next job was to haul some posts and some larger timber and some lumber, and some lumber barrel staves. I hauled that from a warehouse here south of Fresno. I think that is all I hauled over to the Kane place. They told me to go out to Caruthers and clean out a place out there. There were a couple more men there besides me. They were Mr. Cannon and Mr. Kerr. I found them on the place when I got there. Cannon moved his stuff out there with some lumber. I moved it. I took some lumber out there and I think there were some turkeys we hauled out there, a few turkeys. I hauled some nails out there and hammers and some black paper, two rolls of it. We worked there cleaning out the barn and leveling a place in the barn.

At this point the defendant Coates, through his counsel, objected to further evidence as incompetent, irrelevant and immaterial and not within the allegations of the indictment, there being no charge in the indictment that anything was done at Caruthers. The objection was by the court overruled, to which ruling the defendant Coates, through his counsel, then and there duly excepted.

While I was on the ranch at Caruthers some men came and looked in the barn. After this Stumpf came out and

(Testimony of Ferdinand Andreas)

he and Cannon and Kerr had some kind of a deal there together. I was there in the house when they made some kind of an offer. Stumpf offered Cannon \$10 a day if he would stay and he said he was not going to stay there, and he offered him \$20 a day and he would not stay. That was right after the men came and looked in the barn. I reported that to Coates when I saw him. He told me to go back out there and stay until somebody came. Nobody did come out. Stumpf was supposed to come out there but he did not come out there. I went back to Fresno again. Right after that Kerr and Cannon packed up their stuff and left and after they left I stayed out there a while and went back to Fresno and went over to Mr. Coates and told him about it. After that I moved the stuff away from there. It was that night, the same night. I was told to go home. Coates told me that. Coates and Malter told me that if Stumpf would not come out there to go back to Fresno so I went over to Coates and told him that those fellows had left. While I was in the office of Coates, Malter and Stumpf drove up and asked me what I was doing. I told them I had come in, there was nobody out there and I was not going to stay out there alone so Coates and Malter and Stumpf told me I should go home. I went home. That night about twelve o'clock Coates and Malter came over and woke me up and told me to come out and move all that stuff back in the Malter garage.

A. Well, Mr. Coates knocked at the window and called my name and then I got up and looked out of the door, and he told me what to do, and I went out and I think the first two loads we hauled in, I think there were four loads we hauled in. The first two loads, by brother-in-law

(Testimony of Ferdinand Andreas)

helped me. It was heavy stuff * * one man could hardly handle it.

Then I came to the office and told Coates I was quitting, I did not like the job and he transferred me to Salinas where he had a service station. He did not continue my wages at \$5 a day but gave me \$100 a month. I assigned the truck to them before I left, in Mr. Coates' office making payments on it. It was his. I signed it over on the bottom of the contract and gave him a \$100 receipt.

In June 1931 I had a conversation with defendant Coates at Salinas about the truck. He had an affidavit which showed on there that I would sign it over in full power of the lawyer to go and get the pink slip for the truck. The lawyer was Mr. Lindsay South.

Q. What was said by Mr. Coates about your signing this affidavit?

To this question the defendant Coates, through his counsel, objected on the ground the same was irrelevant, incompetent and immaterial, and on the ground that the affidavit had not been produced or shown to the witness.

The objection was by the court overruled, to which ruling the defendant Coates, through his counsel, then and there duly excepted.

A. Well he wouldn't give me my pay check unless I signed that affidavit. So me and him—him and I—we drove down town, we tried to get a notary public's office, he wasn't around then, so we gave a check to his manager and told me to come in the morning to have it signed. I did. After I signed it the manager took it and gave me my check. I have not seen it since.

(Testimony of Ferdinand Andreas)

Whereupon the defendant Coates, through his counsel by motion, asked for an order striking the answer of the witness from the record on the ground it was incompetent, irrelevant and immaterial. The motion was by the court denied, to which ruling the defendant Coates, through his counsel, then and there duly excepted.

Q. Do you know Mr. Andreas why the truck was put in your name?

To which question the defendant Coates, through his counsel, objected on the ground that it called for the conclusion of the witness on a matter which would be impossible for him to know. The objection was by the court overruled, to which the defendant Coates, through his counsel, then and there duly excepted.

A. Why, I think they said they were going to put up a syrup plant and wanted me to haul the stuff out.

CROSS-EXAMINATION

Coates, Stumpf and Malter told me they were going to put up a "syrup plant." I was discharged by Mr. Coates about June 11th or 15th.

Q. That was about the time he insisted that you transfer the pink slip on this truck to him, is that correct?

A. Yes, sir.

Q. And you refused to so do?

A. No, I didn't.

Q. You had already been notified that he wouldn't need your services any more?

A. Oh, yes.

There was some litigation about the three Salinas service stations that Coates was operating. He had told me that he was going to put me in charge and let me take care of

(Testimony of W. G. Walsh)

the business over there and handle it and make me the Salinas manager. That was after the manager got fired. He put me in charge temporarily. I had complete control of Coates' funds, actually collected the payments and banked the money. After Coates discharged me I did not go into the gasoline business in competition with Coates right away. I was working over in Hollister for two months before that, and I moved to Fresno, and I was called up by this man that was the first manager for Mr. Coates—the man that Mr. Coates first fired. His name was Burton. The affidavit that Coates wanted me to sign was a paper with reference to the title to the truck. It had nothing to do with anything else. I am working now for Mr. Burton in a gas station in Salinas. I did not sign a pink slip. I signed a contract—a release for the truck. I had nothing to do with it any more. It belonged to Coates.

W. G. WALSH,

a witness called on behalf of the Government, after being duly sworn, testified in substance as follows:

My name is W. G. Walsh. I reside at 3243 Kerckhoff Street, Fresno, and I am in the truck business. I was engaged in such business during September, October and November 1930. During the month of September or October 1930 I sold a truck to Andreas but not to Coates. Coates and Andreas contracted for the truck and the contract was made in the name of Andreas. I don't think it was put in the name of Andreas at the suggestion of any one. Coates called me and said he had a boy working for him that wanted to buy a truck and he brought the boy down there. The contract was made at that time. Malter

(Testimony of Arnold C. Franzke)

and Stumpf were not at my place of business at the time. I have a copy of the conditional contract of sale for the truck, Andreas signed the contract. Andreas was there two different times. First he looked at the truck and later the contract was signed. Prior to either visit Coates called me on the telephone and said he wanted to buy a truck for Andreas. I am sure I did not see Stumpf or Malter. I don't know Malter. At the time the contract was signed the first payment on the truck of \$100 was made. If I recall it correctly Coates made the payment.

At this point the conditional contract of sale covering the truck was offered and admitted in evidence as Government's Exhibit No. 7.

ARNOLD C. FRANZKE,

called as a witness on behalf of the Government, after being duly sworn, testified in substance as follows:

My name is Arnold C. Franzke. I am engaged in the automobile financing business and was in that business during September, October, November and December 1930, and in January and February 1931. I know the defendant D. Arkalian. I know defendant Alexander Stumpf. Stumpf and Arkalian came to my office to borrow some money on an automobile. Arkalian wanted to borrow \$1500. I told Stumpf and Arkalian to make out an application and to call again the next day. The application was made out. It was Arkalian who wanted to borrow the money but Stumpf was with him. After looking the automobiles over and checking them we found that we had to have more security and offered them \$1200 instead of \$1500. They said \$1200 would not be sufficient for their purposes and after further conversation they left without making any loan. That is all there was to it.

(Testimony of E. L. Kenney)

E. L. KENNEY,

a witness called on behalf of the Government, after being duly sworn, testified in substance as follows:

My name is E. L. Kenney. I reside in Reedley and Fresno. At the present time I am confined in the Fresno County jail. The jail is here in Fresno, but I have been in the jail at Visalia. It was for violation of the National Prohibition Act. I am forty-one years of age. I have lived in Fresno on and off for thirty years. I am a married man and have a family. I have previously pleaded guilty in this case. I know Alexander Stumpf. I know D. Arkalian. I have seen defendant Coates two or three times, that is all. I know who he is. He is one of the gentlemen sitting over here in the court room. I don't know defendant Brix. I know defendant Olson. I have known Stumpf four or five years. I have been employed by Stumpf. I secured employment from him in the year 1930, a little after the first of December, about the 9th or 10th I imagine. Stumpf came to Reedley to see me all alone. I know G. H. Malter by sight. When Stumpf came out to see me he wanted to know if I would be interested in working at an alcohol still. I told him I would think it over. Subsequently I met him, about a week later, in Fresno. He was all alone, and so was I. He said that he was getting everything ready and he was about to start this proposition. I told him I would do it. At that time he did not tell me where it was located. He agreed at that time to pay me \$10 a day. I was to get \$10 a day for working on the job. If I went to jail I got \$5 a day for every day that I was in jail. At that time he did not tell

(Testimony of E. L. Kenney)

me where I was going to work. I was to go to work when we went to the place. We did not go to the place that day. I next saw him probably ten days before I went up to the job. He came and got me at that time. At that time Howard Foss and his wife were with us. We picked them up on the way starting up there. The four of us went up together. We went to a ranch up near Auberry. It is known as the Foss ranch. When we got there there was no equipment there for a still or anything of that kind. On the place we found Jim Proctor. There was no conversation there that day with reference to the still. I remained there that day and Proctor also remained. The Fosses came back with Stumpf. Stumpf came right back up and we started going to work. The day after we got there we went out looking for location, looking for water, to see how the water was around there. We looked all over the place. We had trouble getting water and we finally decided to put the still in the barn. There was some hay in the barn. We cleaned it all out of one end put it in the other end. We cleaned out the end of the barn and there was twelve or fifteen barrels there. We repaired them and filled them full of water and put the mash on in them. There was no still there at that time. We started the mash right away. Stumpf directed the fixing of the mash. Proctor, Stumpf and myself prepared the mash. There was no sugar on the ranch when we went there. I brought it, the sugar there. I had come down from the valley in an automobile. Stumpf gave me the automobile. I hauled sugar up there. I hauled 47 sacks all told. I made about three trips. Stumpf hauled the yeast. I picked it up six or seven

(Testimony of E. L. Kenney)

miles—I went out Tulare Street. There is a Japanese living on the place. I picked it up there. I believe the name of the Japanese is Hata. It was his place. Before that Stumpf and myself and the Jap got the sugar here in town out of a warehouse on the state highway in Fresno. I have since learned that the man who delivered the sugar to us was Kirkorian. It was his place where we got the sugar.

About a month after I first went up to the Foss ranch the distilling apparatus was hauled up there. I hauled part of it and Stumpf hauled part of it. I hauled the base of the still and the column and Stumpf hauled the condenser up.

I am absolutely positive these (referring to proposed exhibits in court room) are a part of the still that was on the Foss ranch.

At this point the Government offered in evidence proposed Government Exhibits 1, 2 and 3.

The offer was objected to by the defendants as (1) incompetent, irrelevant and immaterial; (2) that no foundation had been laid, and (3) that there was no evidence of any connection between the defendants and the objects offered as exhibits in the case.

THE COURT: It is admitted under the qualification heretofore announced with respect to the participation of the alleged conspirators. Any other objections? Overruled. * * *

MR. SAVAGE: May we note an exception, too.

Thereupon the offer was received in evidence as Government Exhibit No. 1, Government Exhibit No. 2, and Government Exhibit No. 3.

(Testimony of E. L. Kenney)

I said that I had seen defendant Coates two or three times. I saw Coates at the Foss ranch twice. I heard a conversation between Coates and Stumpf with reference to paying the salaries of myself and Proctor. It was February 9th or 10th some place along in there, the 11th or the 12th. It was in an automobile out close to the Nielson Apartments, here in town. Stumpf and Coates were present at that time. I had seen Coates up at the Foss ranch prior to that time. Stumpf and I went out there to find out about getting money to pay Proctor and myself. Stumpf wanted me to ask Coates about the wages and I told him no. I said, "That is your place to do that." I said, "I went to work for you." When we got out there Stumpf asked him about it and Coates said, "I refuse to pay anything off." He said, "I put money into this deal and have never got any money back out of it." He said, "in fact Mr. Stumpf I gave you \$3000. Mr. Malter gave you \$3000, and I refuse to put any more money in the deal. In regard to paying these men off the only way I know that they will get their money is to go ahead and run the stuff off and sell the stuff."

The first time I saw Coates at the Foss ranch Stumpf was with him. He came one evening after dark. I was introduced to Coates. I did not recognize him. It was about the first of February. Coates was introduced to me under the name of Brown. I was not with Coates and Stumpf all the time they were at the Foss ranch. They went out of the house for about a half hour and I was not with them. They came back before they left. I also saw Coates at the Foss ranch with Cap Olson. That was about February 10th or 11th. I saw them part of the

(Testimony of E. L. Kenney)

time. They went down and went in the barn. I was in the house all the time. I saw Coates and Cap Olson go down and go into the barn. I don't remember how long they stayed in the barn. I don't think I seen them come out. They were in there possibly half an hour. While they were in the barn and while myself, Proctor and Stumpf were present in the house Stumpf said, "I am going to get out from this deal. They don't seem to be satisfied with what I am doing here. This is your new boss coming up. I am through. If you fellows want to work any more, you can go ahead and work. If you don't you can quit." This conversation at the Foss ranch was around about possibly three or four in the afternoon and the conversation that I have related between Stumpf and myself and Coates here in Fresno was probably about five or six hours after that on the same day. I came down from the mountains with Mr. Stumpf. Coates and Olson had come down ahead of us. We had asked Stumpf for our wages several times. He said the fellow who was supposed to pay was gone to San Francisco. He was coming back. He made a trip down from the Foss ranch to get money for us. We saw him when he got back. He "stalled" and he was evasive, he would say he would be back the next day, or the second day. He said he didn't get it at that time. On the last day that he was up he offered us \$30.30. He said "That is all the money I got." We declined to take it. Olie Olson wasn't there the last time they came up. The still was built and we tore it down and rebuilt it. It was still up. When Coates and Olson came up the still had been tested and a run made on it but we tried to run it and it wouldn't run. We made

(Testimony of E. L. Kenney)

an effort to run it. We did not get very much alcohol, about a gallon. That is the only time I knew of its ever having been steamed up while I was there. The matter with it was that the mash wasn't in shape to run for one thing, and then it leaked, it leaked all over. Olie Olson was there at that time. It was torn down and a new condenser made. We all helped to make it. Olson was the mechanic.

I remember Coates eating at the house the last time he was up there. He came to the house and said he was hungry. Of the alcohol we manufactured from the still Stumpf brought a sample down to Fresno and left the remainder—a little bit—there. Olson was employed on the ranch working on the still around 5 or 6 weeks. During the progress of the work, I saw D. Arkalian there. He came with Kirkorian. Once when Arkalian and Kirkorian were there, they were at the house and another time they were there Stumpf sent me up to the mountains and told me to keep out of sight, to lay low. He didn't want them to see me.

CROSS-EXAMINATION

I knew Stumpf about five years. I had business with him before this transaction. The business was selling liquor. I bought liquor from him.

The first time Coates came up to the Foss ranch it was just after dark. Stumpf came with him. Malter was not there at that time. I know he was not there. I went out to the car and took some things out of it. When Coates drove up Malter was not in the car. I seen him when he left. He was not in the car when they drove up. I don't know whether Coates went to the barn on that

(Testimony of E. L. Kenney)

trip or not. Coates made no talk. Nothing was said. He and Stumpf came into the house and Stumpf introduced him as Brown and then they went outside. Outside of shaking hands with him and meeting him I had no conversation. Proctor was there. I had seen Coates before but did not know him. I had seen him at his filling station. He came again a few days afterwards, this time with Cap Olson. They went down and went inside the barn and were there for about a half hour. I did not see them come out. Stumpf said, "Boys, this is your new boss. I am through. * *" I don't know whether he referred directly to Mr. Coates or Mr. Olson, but I believe it was Mr. Coates. Mr. Coates gave me no money at any time. I didn't demand any money from Coates. I heard no conversation between Stumpf, Olson and Coates referring to any business. After Coates and Olson left Stumpf said, "I will go down and get the money." I told him, "No". I said, "Mr. Stumpf you fooled us too many times. I am going with you." Stumpf had fooled us several times about the money. He agreed to bring it to us. We were not going to trust Stumpf at all so I went with Stumpf. We did not overtake Coates and Olson. I was with Stumpf before going to Coates' house. On the way down an argument came up between me and Stumpf. Stumpf wanted me to ask Coates for the money. He told me he thought I could get it, it would be better if I went to ask him. He said, "I think there will be a better chance if you ask him." I told him I would not ask anyone for the money. I told him I didn't know whether Coates owed me this money or not. He hemmed and hawed around and he said,

(Testimony of E. L. Kenney)

"Now, when you go out there and see this man, don't let him talk about anything else. If he starts to say anything else you tell him to stop. Don't talk about anything else. Don't let him talk about anything else." I agreed with the plan in order to get him to take me to this man. Nothing was said about my getting hard boiled. We drove over in front of Coates' house. We did not go in. The conversation started with Mr. Coates on the outside and I think Stumpf invited him into the car to sit down. Stumpf said to him, "How about paying these men off?" Coates said, "I am all through. You delusioned me on this deal up there. You told me that you paid \$1200 for this still and paid \$200 to have it hauled up from Los Angeles. I have found out since that you made this still out at Malter's." The first thing I knew Coates was swearing at Stumpf. They had quite a set to over the deal. Stumpf kept pushing me in the ribs all the time. He had told me "If he talks about anything else you stop him right up." But I refused to stop him. I let him talk until he started in on me. He says to me, "You two fellows, did you work for Stumpf over at Gilroy and run a still over there?" I didn't answer the question, and then Coates started in swearing at me. I told him, "Mr. Coates, listen, all I am trying to do is get my money out of this. Don't cuss me like that because you can't cuss me." Stumpf told him out there, "If you don't pay these men off they are going to bring suit against me, and you know what that means." I believe Stumpf told Coates that. I talked to Proctor afterwards about this conference. When I went back up there I told Proctor what I could find out that Stumpf had got the

(Testimony of James Proctor)

money away from these fellows and was gypping them. I explained to him what Coates had said. At that time Stumpf admitted to Coates that Coates had given him \$3000 and Hugo Malter had given him \$3000, and he accused Stumpf of taking that money and furnishing the house and buying the place where he lives. I had many conversations with Stumpf but I have never spoken a word to him since the indictment. Up to the time I was down at Coates' house with Stumpf I didn't know that Stumpf had received any money from Coates.

I know Hugo Malter. I haven't talked to the Government. I talked to the agent either before or right after the indictment. Mr. Whitfield was the agent representing the Government. The conversation was at the county jail here in Fresno. That was not in connection with this case at that time. I have been convicted of a felony. At the Foss ranch on his last night Coates said, "The only way these boys can get their money out of this deal is to go ahead and run that stuff off up there and get their money out of that." He further said, "I am all through, I am not going to put any more money on this deal. I have found out that you gypped me."

JAMES PROCTOR,

a witness called on behalf of the Government, after being first duly sworn, testified in substance as follows:

That his name is James Proctor; that he resides at Shaver Lake, Fresno County; that he had lived there all summer; that he knew Stumpf, first becoming acquainted with him the preceding December; that he knew Foss for four or five years; that he knew Kenney since last

(Testimony of James Proctor)

December; that he had met defendant Coates twice at the Foss ranch; had been introduced to Coates as Mr. Brown in last January; that he was present when Foss came to the Foss ranch; had been staying at the ranch about a year working for Mr. Foss; at the time Foss came Stumpf was with him and also Kenney and Foss's wife; that he heard no conversation between these people; that he heard Foss say he had leased the ranch to Stumpf and that he thought Stumpf wanted to hire the witness to work for him and stay on the ranch; that this was about the 9th of December 1930; that these people did not return to the ranch but that Foss's wife came again in February. At that time she came alone; that Stumpf had called at the ranch again; was staying there part of the time, most of the time; Kenney also stayed there; that the witness went to work prospecting for water, working at the spring and cleaning out the well; that there were some barrels there and some water tanks; they were not brought up there but were there already.

Stumpf told me he was going to put up a still and wanted me to work for him. Soon after that he brought some things and we went to putting them up. Kenney and Stumpf helped me. Soon after that a man named Olie Olson came to the Foss ranch. He went to work on the still. That is the still that is in the court room here. Myself and Kenney and Foss and Olson went to work on the still. I also cut some wood; also made some changes in the buildings.

During the time I was there I met men named Coates, Arkalian and Kirkorian. I met them at the ranch there. I first met Arkalian. When Coates came he was by

(Testimony of James Proctor)

himself. I had no conversation with him. I heard no conversation between him and anyone. Stumpf introduced him as Mr. Brown. Kenney was present. I heard no conversation between any of these men at that time. Stumpf promised to pay me \$8 a day and board. He never paid me anything. He said he could not raise money to pay me. While I was on the ranch Stumpf brought groceries. I don't think Coates brought any. Coates was not along with Stumpf. I did most of the cooking at the ranch. Coates ate lunch there one afternoon. Olson was with him. I heard no conversation between him and anyone. Coates was outside talking with Stumpf. They went into the barn. After Coates left Stumpf wanted to dump out the mash and hide the still. I told him to leave it there until they paid me my wages and then he could do what he pleased with it. Right after that he said he would get my money. He came back after that. He then referred to Coates. He said Coates was supposed to furnish the money to pay us.

Q. Was there something said by Stumpf at that time in connection with the purchase of the plant? Being in escrow, or escrow or anything of that sort?

The defendant Coates, through his counsel, objected to the question on the ground it was leading and suggestive. The objection was overruled by the court.

A. When Mr. Coates come, Mr. Stumpf come in ahead of him and said that he turned everything over to Mr. Coates.

Kenney was present at the time.

Q. Did he make any reference to Kirkorian or Arkalian at that time? A. No.

(Testimony of James Proctor)

Q. Well now think that over carefully. I wish you would look at this statement here for the purpose of refreshing your memory.

MR. LINDSAY: If your Honor please, I object to showing him that.

MR. DAVIS: Wait until I get through with the question.

Q. I ask you first if this is your signature?

MR. LINDSAY: Are you taken by surprise, counsel?

MR. DAVIS: Well I don't think it is necessary to be taken by surprise the way I am presenting this matter. I am only referring to a document and asking him if he signed it and asking that he use it for the purpose of refreshing his memory.

MR. LINDSAY: Object to the witness being given any memorandum to refresh his memory, unless it appears the memorandum made by the witness himself or under his direction. That I understand to be the rule.

Whereupon the objection was by the court overruled, to which ruling the defendant Coates, through his counsel, then and there duly excepted.

Q. By MR. DAVIS: Did you sign that (referring to the statement handed to witness by counsel for the Government for the purpose of refreshing the memory of the defendant)? Your answer please?

A. Yes.

A. Yes. Stumpf said that Coates and Kirkorian and Arkalian were going to buy this and he was stepping out of it and he said "If you want to work for them you can go ahead and work for them."

Stumpf talked to me about moving the plant in Kenney's presence at the Foss ranch. He wanted to dump the mash and hide the still. I made an objection and protest. I told him to leave it alone until he paid me for my work.

(Testimony of James Proctor)

CROSS-EXAMINATION

I never heard any conversation about forcing Coates to pay this labor bill. I told Stumpf at different times that I was going to stay and watch that still and that nobody was going to move it or touch it until they paid me. I told him I was armed and I intended to stay so until I got my money. I had guns in the house.

I was up there at the time the still disappeared. I can't give you the dates when it disappeared, it was about the middle of February. I did not hear and I did not know who moved it. It was moved in the night time. Kenney gave me a report about Stumpf and himself meeting Coates down in Fresno about money. He said that he heard Coates tell Stumpf down here that he gave him \$3000 and that he was a double-crossing son-of-a-bitch. Mr. Kenney told me that he heard Coates say he gave Stumpf \$3000 and that Coates told Stumpf that he was a double-crossing son-of-a-bitch. I think Kenney also told me that Coates wouldn't do anything. Kenney told me that Stumpf was going to attach Coates' trucks down there.

Q. Did you ever hear any talk on the Foss ranch in the presence of Mr. Coates or Mr. Olson where anything was mentioned about the operation of the still or the engaging in the manufacturing or sale of alcohol.

A. No.

I made a statement in writing signed by me to two representatives of the United States Government about this case. I made the statement in Fresno. It was on Fresno Street where Howard Foss works. The two men that I made the statement to were representatives of the

(Testimony of Walter G. Kerr)

Government. I don't know their name. Whitfield was not one of them. I can't say whether Dibble was or not.

(By colloquy between court and counsel and by reference to an instrument in writing it was agreed that the two Government representatives were Clements and Panel.)

They asked me if I would make a statement. They said they were after Stumpf. The Government officers made no statement which would lead me to believe that I would not be prosecuted. I did not request that the case be dismissed. I did not talk to anyone in substance to the fact that if the case were dismissed against me that I would freely testify. I did not know that the case would be dismissed against me until I sat in court.

WALTER G. KERR,

a witness called on behalf of the Government, after being duly sworn, testified in substance as follows:

That his full name was Walter G. Kerr, and that he resided at 2331 Thomas Avenue in the City of Fresno and had resided in the City of Fresno since 1913; that he knew Alexander Stumpf; that he had met Coates; that he knew Malter; that he did not know Kirkorian.

Sometime last fall I became acquainted with Stumpf. About the 9th of September I met Malter and he asked me if I would like to go to work. That afternoon he introduced me to Stumpf. This was in the Fresno Auditorium. I was to go to work for them at \$10 a day and expenses. At that time the work was to be carpenter work, repair work. They didn't say exactly what. I went to work for them on the 12th. I went out to the Malter

(Testimony of Walter G. Kerr)

house on the 12th of September. I saw Stumpf there and saw Malter later in the day. Stumpf wanted me to go with him to see about renting a place. We first went to a place north of town at about Winery Avenue. We went to Madera and looked at another place. He said he had to go to Los Angeles the following day and I could work out there at Malter's place. He said he was going to Los Angeles to see a party about renting a place. When I went to work on the Malter place I saw Olie Olson. He was working on some copper and what they claimed they were making, a pot. He did not say anything about a still, he called it a pot. It was across the ditch bank of Malter's winery, in the field. There is a building over there. They do not call it the library. It is a different building from the library at the place. I had just a general conversation with Olson at the time. I stayed there all day. A couple of days later I saw Stumpf again at Malter's. I talked to Stumpf. Stumpf gave me some money and I came in town and bought some pet cocks and solder and some soldering irons. Stumpf told me what to get. I took these things out to the old house where Olie Olson was working. I took them in where he was working. I saw Stumpf every day. The next trip we made together was to Caruthers, to what is known as the Morton ranch. He had a talk with Morton. Later he told me that he had rented the ranch. I was out on that ranch seven days. There was a truck driver there but I could not say what his name was. He was called Shorty. I believe he drove a Chevrolet truck. During the seven days I was on this ranch at Caruthers I did carpenter work, tearing out and getting this barn cleaned out.

(Testimony of Walter G. Kerr)

Some material was brought out there by the truck driver. They said they were going to use it for a still. Stumpf told me that. I never saw Coates down there. Finally I refused to work any more. I went out to Malter's place and told him that I was through. Malter and I went over to Stumpf's house and had a conversation with Stumpf and I told him the same thing, that I was through with him. He said I had cold feet. I told him I knew I did. I told him and Malter that I did not want to be mixed up in that kind of a deal. Malter paid me twenty dollars and five dollars for my work. Stumpf called the concern a corporation. Always spoke of it as "the corporation". He said he was the head of it; that he was the big buy. I never saw any still.

CROSS-EXAMINATION

I never heard Coates' name mentioned by anybody. I had known Malter about three years. I had done lots of work for Malter before this out at the Malter vineyard. I never attempted to build any still for him before. I worked on the water wheel there and some work around the house. I saw the still out there on the Malter place in the syrup plant. Many times I heard Malter talk about being in the grape syrup business. I never heard Stumpf talk about being interested in or connected with the grape syrup business. It was Stumpf that told me he wanted to build a still. My business is that of carpenter. The real reason I quit was because I got cold feet. It was also because I distrusted Stumpf. I did not like him. I told him so. I told him he did not keep his work with me.

Stumpf never paid me the full amount of wages due me. I demanded it of him. He told me to go to hell.

(Testimony of G. H. Malter)

Prior to the commencement of the taking of testimony in this trial, and prior to the time when the first witness, Alexander Stumpf, was sworn and began to testify, an order was made by the court that all witnesses in the case, including the witness G. H. Malter, be excluded from the court room during the taking of testimony in the case.

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G. H. MALTER,

a witness called on behalf of the Government, after being duly sworn, testified in substance as follows:

My full name is George Hugo Malter.

MR. SAVAGE: If the court please at this time I want to bring up a matter, whether it should be brought up before the jury or not, I don't know. It is in reference to the examination of this witness. At the beginning of the trial the witnesses were all asked to be excluded. Of course, the reason for the exclusion was so that they might not know or be advised of the testimony, especially of their accomplices. I have been told definitely that this witness has been furnished with the testimony as it was transcribed from day to day. If that is a fact, I want to make inquiry of this witness and produce the proof as to that situation. Whether it should be done in the presence of the jury or not, I am calling the court's attention to it.

THE COURT: Does the Government care to be heard on this matter:

MR. McNABB: Why, we have nothing to conceal in the matter, your Honor. This witness has been furnished with part of the transcript and has been interrogated on

(Testimony of G. H. Malter)

it, of course. We interrogated him last night on the various points raised in the testimony and he may have, I think I have seen him reading the transcript out there, portions of it here in the office, and he read portions of it last night, I am sure.

MR. SAVAGE: Was that furnished to him by the Government?

MR. DAVIS: He has not been furnished with any copy in the sense of being furnished with it.

THE COURT: No, I am not aware of any rule—

MR. SAVAGE: That is exactly the thing,—

THE COURT: Go ahead with your law. You say the evidence was not furnished him by the Government?

MR. SAVAGE: Well it was the Government transcript.

MR. McNABB: It was the Government transcript.

THE COURT: I understand.

MR. McNABB: And he came in and wanted to see the transcript and we let him look at it.

MR. SAVAGE: That is the only statement we want.

MR. McNABB: And told him he could read it if he desired. It was not all furnished to him.

THE COURT: All right.

MR. SAVAGE: I think they will concede it. I do not know that the government attorneys had been parties to it. I say it was done in good faith, and I think that they believed they had the right. But we think it would be prejudicial.

THE COURT: Have you any criticism of the method pursued as to the examination of a witness by the party producing him as to the testimony given?

* * * * *

(Testimony of Wilbert G. Whitfield)

MR. SAVAGE: Yes, I do.

THE COURT: You have an objection to it? You do not do anything like that, do you?

MR. SAVAGE: What is that?

THE COURT: Isn't that practice followed by the defense in this case?

MR. SAVAGE: Absolutely we go over the case and ask about this and that, and prepare the case, but as to furnishing him with the statement or the information—

THE COURT: It amounts to the same thing, it seems to me.

MR. SAVAGE: Here is the authority, in my judgment, it is a clear defined case of contempt of the court when he is excluded so that he cannot hear the testimony, of a witness and then he be furnished by one of the parties with that very written testimony.

THE COURT: That does not seem to be the case here. Mr. McNabb says that only excerpts were furnished.

After further discussion between court and counsel and after further argument between contending counsel, it was agreed that the witness, G. H. Malter, should be temporarily withdrawn by the Government, and that the question of the admissibility of his testimony should be further considered by the court before final decision thereon.

WILBERT G. WHITFIELD,

a witness on behalf of the Government, having been previously sworn, further testified, in substance, as follows:

I was sworn yesterday. The matter of the Foss Ranch still investigation—the Caruthers end of it, the whole

(Testimony of Wilbert G. Whitfield)

transaction—came to my attention from time to time on anonymous information brought in by undercover agents. It was about September, I believe the middle of September, or October, 1930. I began piecing the information together as the information came in. In the course of my investigation I came in contact with these defendants. The first man I interviewed was Kenney. I heard Kenney's testimony this afternoon. I also interviewed Mr. Olson. I also interviewed Mr. Olson in my office, in Fresno. The interview with Olson was taken down in shorthand, and was afterwards typewritten. The typewritten statement was given to me by Mr. Ohanesian, and I took it to Mr. Olson and submitted it to him. He read it, or I read it to him. He signed it, in my presence.

At this point the typewritten statement made by the defendant Olson was offered in evidence by the Government, to which offer the defendant Coates, through his counsel, objected, on the ground and for the reason that the said statement contained matter damaging and prejudicial to the defendant Coates, and on the ground that the said statement of the said Olson was made after the termination of any possible conspiracy alleged in the indictment between Olson and the other defendants, and on the ground that such statement so made after the termination of the said conspiracy by the defendant Olson was not binding upon his co-defendant or co-conspirator Coates.

THE COURT: The objection, of course, is good. That is the position of the Government, no doubt?

MR. McNABB: Yes, sir. This is offered only as to the defendant Olson.

(Testimony of Wilbert G. Whitfield)

THE COURT: Yes.

MR. McNABB: The things that are said in there that relate to other defendants, it is conceded that they are not binding upon the defendants and that the jury, of course, we are perfectly willing that the jury be instructed to disregard it as to any other defendant, but you cannot segregate it.

(The Court reads—the statement)

THE COURT: Well, apparently it is a narrative, of the events testified to by the first witness—

MR. CURRAN: Mr. Stumpf?

* * * * *

THE COURT: Mr. Stumpf. Very well.

* * * * *

THE COURT: It is so natural, it is so interwoven, Mr. Curran, I see no way to segregate it, and I do not think it can be done intelligently. Go ahead and have it done.

MR. CURRAN: I ask for an exception.

MR. McNABB: For the purpose of refreshing your memory—

THE COURT: Well, are you going to read it?

MR. SAVAGE: Are you going to offer that in evidence?

THE COURT: Is there any denial on the part of the defendants that this statement was made by the defendant Olson?

MR. CURRAN: No, there is no denial.

THE COURT: Then the jury should be instructed, and I will instruct you now that the rule in this case, as I

(Testimony of Wilbert G. Whitfield)

will fully instruct you later, is that after a conspiracy has ceased, then of course one party is not bound by the acts or statements of another party to the original conspiracy. It is just like an agent. A principal is bound by the act of his agent so long as the agency exists. Now, after a conspiracy ceases, or rather after the agency ceases, naturally he is not bound. Now, it is the same principle with reference to a conspiracy. During a conspiracy the acts of one conspirator in furtherance of a common design bind all of them, but after the conspiracy has ceased, then the acts, statements or words of one conspirator actually does not bind all of the conspirators and it binds only that one. If it were, in my judgment, possible to extract or to separate one from the other, one part from the other, I would think that that would be the best method to do it, but you are instructed now, gentlemen, that so far as this case is concerned, the statement or the testimony of Olson, as shown in that statement, binds Olson only and is not to be regarded by you as evidence against any of the other conspirators. Now, go ahead.

MR. SAVAGE: May I note an exception to the instruction by the Court?

THE COURT: Yes.

MR. SAVAGE: And Mr. McNabb has just now offered in evidence previous to that, and no objection could properly be made, and I now want to object to the signed statement of Mr. Olson being offered in evidence; clearly from the statement it can have nothing to do with his guilt.

THE COURT: I understand that you are asking the witness if Mr. Olson said so and so at this time?

(Testimony of Wilbert G. Whitfield)

MR. McNABB: Well, I was going to, but I thought as long as they did not question Mr. Olson did not sign it, I would offer it as a whole and read it to the jury.

THE COURT: That would be the expeditious way.

MR. SAVAGE: Well, he is offering it in evidence, and I am making that objection to it.

The objection was overruled by the court, to which ruling the defendant Coates, through his counsel, then and there duly excepted.

The statement was thereupon read in evidence by the United States Attorney, and was, in part, as follows:

“United States v. Alexander Stumpf, et al; No. 1528-C. Statement of Olie Olson, who states that his full and true name is Arthur Emil Olson. This is a statement taken from Olie Olson in the office of the United States Attorney in the presence of Bud Olson, P. Mastro, and Prohibition Agent Whitfield, and Miss E. C. Jessup, Stenographer.

“All questions in this statement were asked by Agent Whitfield, except as otherwise noted.

“Olie Olson, who states that his full and true name is Arthur Emil Olson, being first duly sworn on oath deposes and says that he makes this statement of his own free will and accord and states his willingness that same might be used by the District Attorney in the trial of the above-entitled case, and give testimony relative to such facts as are within his knowledge.”

(The statement here shows that Olson, in response to questions propounded, narrated when he first became acquainted with defendant Stumpf, his conversations with the latter about setting up a still, his receiving \$100 from Stumpf to buy materials, the connection of defendant

(Testimony of Wilbert G. Whitfield)

Brix with the enterprise, Malter's participation in the same, and so forth.)

Q. Did you see Coates at all?

(At this point the defendant Coates interposed an objection, on the ground that testimony was being received of a witness in the form of a written statement and that he, defendant Coates, was deprived of an opportunity to cross-examine the said witness. The objection was overruled by the Court, to which ruling the defendant Coates excepted.)

A. Yes, I met Coates several times out there at St. George Vineyard.

Q. When was the first time he came out there?

A. A long time after I started the still.

Q. How far had you gone in building the still when Coates first came out there?

A. I had it all completed. Mr. Stumpf and Malter gave me the design and told me what sort of still they wanted.

Q. When did Coates come out there?

A. He came out there some time after I had started building the still.

Q. Did you have a talk with him?

A. Yes, I had a little conversation with him. Coates did not know anything about this still at all. He had a proposition, he wanted to build a still, too.

Q. Did he say what kind of still?

A. A Whiskey still.

Q. What kind of still, size and what was he going to do with it?

(Testimony of Wilbert G. Whitfield)

A. He wanted to know about what it would cost and I told him, I forgot just what I told him, but I didn't see him for quite a while and he never said anything more about it. He said he wanted a still that would run out quite an amount.

Q. Did he say where he was going to put the still, or did he give an order?

A. No. He didn't know anything about the still I was putting up.

Q. When Coates first came out was Hugo Malter there with him?

A. Yes.

Q. Did Hugo say anything?

A. Malter in the presence of Coates said that Coates himself was going to put up the money for the still but Coates did not know anything about this one that I was building.

Q. You understood that you were taking your instructions from Stumpf? as to the size and the model of the still and the design?

A. Yes.

Q. Did he look at the still after you had started it to see whether you were building according to his instructions?

A. He was out there every day.

Q. After you had finished the still was he satisfied with it?

A. There were several months that nothing was done, and the first thing I knew, he had the thing carted up in the hills and in four sections.

Q. Did he ask you to go in the hills you to set it up?

(Testimony of Wilbert G. Whitfield)

A. Yes, Stumpf did. He said if I would come up and set up the still that he would pay me off in full.

Q. Was anyone with Stumpf at this time?

A. No.

Q. Did you tell him that you would go with him and set up the still?

A. I told him I did not care much about it, but he begged me to go up and said if I would complete the still he would pay me off in full.

Q. Did you go up to the ranch?

A. Yes, Stumpf took me up in a Cadillac touring car.

Q. Did you set up a still at the ranch?

A. Yes.

Q. Was Stumpf with you when you set up the still?

A. Yes.

Q. Did he tell you how he wanted it set up?

A. Yes.

Q. Did you set it up the way he wanted it set up?

A. Yes.

Q. Who was present at the ranch at the time you set up the still and who assisted you?

A. Kenney, Proctor and Stumpf and we all worked together setting up the still.

Q. Were you there when they started the still in operation?

A. Yes, I was there when they started, but it was not exactly completed. It didn't work right. There was a burner under the still and it worked all right but the condenser was too big.

Q. Did Stumpf say that the condenser was too big?

A. No, I told him it was too big.

(Testimony of Wilbert G. Whitfield)

Q. What do you mean when you said that the still did not work right, how did it act?

A. It did not continue, the condenser was too big, it cooled off too much.

Q. Was there any explosion?

A. Not while I was there.

Q. What did Stumpf do about it?

A. I don't know, he brought me down there and let the boys take me back but I never seen him since.

Q. Did Stumpf tear down the still for the purpose of making changes?

A. No, sir.

Q. Do you know a man by the name of Walter Kerr?

A. Yes, sir. I just met him last summer.

Q. Was he present at any time at Malter's while you were building the still?

A. Yes.

Q. Did you have a conversation with him, and state what it was.

A. Yes, but I could not state what the conversation was but he assisted me in building the still.

Q. Did he know for whom this still was being built?

A. I don't know whether he knew or not.

Q. Did you ever see Walter Kerr and Stumpf conversing together about the still?

A. No.

Q. What part of the still did he assist you in building?

A. The base.

Q. Did Walter Kerr go up to the ranch with you?

A. No.

(Testimony of Wilbert G. Whitfield)

Q. Do you know whether or not Walter Kerr received any money for wages for building this still?

A. No.

Q. Did Walter Kerr state how much he was to receive?

A. He said nothing to me about it or for whom he was working, but I think he was hired by Malter.

Q. Who brought you down from the ranch after you finished working on the still?

A. Alexander Stumpf and Kenney.

Q. Did he pay you the money he owed you for working on the still?

A. No.

Q. Did he ever promise to pay you the money?

A. Yes.

Q. What was the amount that he agreed to pay you?

A. \$10 a day.

Q. What amount did you figure it to be?

A. I figured that at his price it would be \$1200, the time I put in.

Q. Has he since offered or made any effort to pay you the money?

A. No.

Q. Do you know whether or not the copper which you purchased for the still was paid for?

A. Yes, I paid for it out of the \$100 that was given me.

Q. Did you see Ted Brix up at the still while you were working on it?

A. No.

Q. Did you see Coates?

(Testimony of Wilbert G. Whitfield)

A. No.

Q. Did Stumpf at any time you were working for him tell you that he was the whole works?

A. No.

Q. Have you seen Stumpf at any time since leaving the ranch?

A. Three times—I saw him twice at the St. George and once at his house. The first time I saw him I asked him for some money. I met him again out there at the St. George. He said, ‘all right, I am going to the bank now and will meet you at the bank at 1 o’clock’ and I waited from 1 o’clock until 8 o’clock and then went back to the St. George again and then he come around Monday morning and said his mother-in-law was sick and said he would give me money today and I was there at the bank at 12 o’clock when he told me to come and I waited and it was 1 o’clock and he never showed up. And another time I went out to his house. I rode on my bicycle out there and he said he did not have any money, that Hugo had it all tied up in the bank, and I have not gotten any money yet.

Q. Was that the last time you saw him?

A. Yes, the third and last time I saw him.

Q. Did Stumpf at any time tell you where he was getting the money from to build this still or who was paying him the money?

A. No, he never.

Q. Did you see Zone Kirkorian at any time out at the still?”

MR. LINDSAY: If your Honor please, I am not going to object at this time, but I do not waive my rights

(Testimony of Wilbert G. Whitfield)

to object to future or other statements that may be offered.

THE COURT: Overruled. This will take the same course as the other. Overruled.

MR. LINDSAY: I make no objection at this time.

MR. McNABB: (Reading)

"Q. Did you see Zone Kirkorian at any time out at the still?

A. I don't know Kirkorian.

Q. Did you see D. Arkalian at any time out at the still?

A. I did not know Arkalian but I saw him out here in the hall the other day.

Q. Was James Proctor and Eugene Kenney out at the still all of the time that you were working on the still at Auberry?

A. Yes.

Q. Have you had any conversation with any of these defendants charged in this conspiracy lately?

A. None but with Hugo Malter."

Signed "A. E. Olson."

The defendant Coates, through his counsel, thereupon, by motion, applied to the court for an order striking from the evidence all parts of the statement made by Olson referring to defendant Coates, on the ground that such portions of the statement are and were irrelevant, incompetent and immaterial, not binding upon the defendant Coates, made after the termination of any conspiracy which might have existed between Coates and others of the defendants, and on the ground that he, the said defendant Coates, had been deprived of an opportunity to

(Testimony of Wilbert G. Whitfield)

cross-examine the said Olson as to such statements made by him.

The motion so made by said defendant Coates was thereupon taken under advisement by the Court.

(Testimony of Mr. Whitfield, witness for the Government continued.)

I observe Government Exhibits 1, 2 and 3 over on the other side of the court room. I first saw the column and the condenser in a brush pile on the Malter Ranch. The condenser is the shorter of the two cylinders, and the column is the longer of the two cylinders. The longer of the two cylinders is marked Government's Exhibit No. 1. That is what I call the column. The shorter of the cylinders is Government's Exhibit 2. That is what is called a condenser. Government's Exhibit No. 3 is the square box or base under it.

I first saw these exhibits, as stated, in a brush pile on the Malter Ranch, on or about April 22d, after Hugo Malter had 'phoned me. I seized two 4000 gallon vats and eight 50 gallon vats and a pump and a small boiler at the Foss Ranch. It was in a barn. I first made the discovery on April 5, 1931. It is a fact that Hugo Malter pointed out to me the place where I discovered these articles.

The witness thereupon narrated an interview between the defendant Brix and certain Government agents, and particularly an agent named Dibble.

Q. By MR. McNABB: Did not Mr. Brix offer to plead guilty?

Whereupon the defendant Coates, through his counsel, objected to the question, upon the ground that it was irrelevant, incompetent and immaterial, not binding upon

(Testimony of G. H. Malter)

the defendant Coates, not made in the presence of Coates, and made after any conspiracy had fully terminated.

THE COURT: This is something happening after the indictment, of course, and after the conspiracy had terminated, and is therefore only admissible against the one making the statement. That is the rule. The jury no doubt understands that because I stated it very plainly yesterday.

The objection was by the Court overruled, whereupon the defendant Coates, through his counsel, then and there duly excepted.

A. Mr. Brix did not offer to plead guilty himself, but he stated about this airplane deal and about the syrup. Mr. Fenston said that he was willing to enter a plea of guilty to any misdemeanors on the charge, but he did not like to see the boy do a jail sentence for a conspiracy.

At that time defendant Brix was questioned for over two hours by Mr. Dibble in my presence. He answered all questions freely and voluntarily. He offered to plead guilty to any misdemeanor charges.

G. H. MALTER,

recalled as a witness on behalf of the Government, having been previously duly sworn, testified in substance as follows:

Here the court announced its ruling on the question of the admissibility of the testimony of the Government witness G. H. Malter.

The Court said:

"With reference to the testimony of Mr. Malter, I was convinced at the beginning that that is a matter that is

(Testimony of G. H. Malter)

within the discretion of the Court. * * * It is not the fact that he disobeys the order of the court, that is not a reason for excluding his testimony.

“And in this case the whole surroundings of it, and the facts appear not to call for any exclusion. As I stated yesterday, it is the duty of counsel to know what his witness is going to testify to before he goes on the stand. And the witness in this case, it seems conceded on all sides, is free from fear of prosecution, having testified before the Grand Jury. That is my understanding.

“So I think the testimony must be admitted.”

THE COURT: Yes, sir, Mr. Curran.

MR. CURRAN: That we be permitted to show at this time through the testimony of the witness Malter, exactly what the circumstances were surrounding his reading of these transcripts, so that you will pass upon the matter of the discretion when you come to it, Your Honor will be better able to exercise that discretion, if your Honor has all the facts before him.

THE COURT: The discretion is exercised already.

MR. CURRAN: May we add for the purpose of the record.

THE COURT: You may do that by cross-examination. It will be an idle act if you are going to do that with a view to change the ruling of the Court, Mr. Curran.

MR. CURRAN: For the purpose of the record.

THE COURT: I am basing this on the proposition that the United States Attorney has acquainted the witness with different facts in the case as to the testimony of witnesses for the purpose of checking up on the wit-

(Testimony of G. H. Malter)

ness' testimony as shown in a general transcript of the evidence.

MR. McNABB: What?

THE COURT: That is, you have given the witness the general transcript of the evidence?

MR. McNABB: No, your Honor.

MR. CURRAN: Yes, sir.

MR. McNABB: He has been shown—

THE COURT: Excerpts?

MR. McNABB: Yes. This transcript has never been in shape so you could show it to anybody. It was gotten out in piece-meal.

THE COURT: That was my understanding.

MR. McNABB: What happened to it the other night, the night before last, we asked the witness to come down to the hotel as we wanted to talk to him. Now, your Honor will understand that Mr. Davis and I knew nothing about this case when it came up here. It was developed by Mr. Ohannesian. We knew none of the witnesses, never had seen any on either side. So we asked, after hearing the testimony in part, we asked him to come down to the Hotel, and we left him in the room, I wasn't in the room, Mr. Davis had him, but we went to dinner, and we left the witness in the room there, while we went to dinner. There was a portion of one day's record of the trial in that room. And then, when we came back, he was reading it. I don't know how much of it he read, but he couldn't have read it all through in that time, I don't think. Then, we put him on the grill to ask him questions. Of course, we asked him with reference to matters that were in the testimony that we had before.

(Testimony of G. H. Malter)

And we didn't have the first day there, and I don't know whether that was the second day,—will you explain to the Court, Mr. Davis, just what happened?

MR. DAVIS: If the Court please, I don't remember what day that was, but I think it was—

MR. McNABB: The second day.

MR. DAVIS: Two or three days ago. And at that time there was, I think, just a fragment of part of the record consisting of a very small part of the entire record. And when we returned, as Mr. McNabb said, if I recollect correctly, Mr. Malter was either reading that or had it in his hand at the time, and immediately after that we started to inquire of him as to what he knew about the case.

I will say this, that never at any time has Mr. Malter had either in his possession, nor have I had in my possession the entire transcript of any one witness in this case; and he has never seen the entire transcript of any one witness in this case so far as I know.

THE COURT: I understand that was the general scope of the investigation. Proceed.

Whereupon the defendant Coates, through his counsel, then and there duly excepted to the ruling of the court.

Thereupon the defendant Coates, through his counsel, by motion, asked permission of the Court to examine the witness Malter as to the true facts. The motion was by the court denied, to which the defendant Coates, through his counsel, then and there duly excepted.

I live five miles east of town, and I have lived there all my life. I believe I am acquainted with all the defendants in this case. I have known Stumpf about a year, Kenney

(Testimony of G. H. Malter)

about six months, Olie Olson about a year, Cap Olson a couple of years, Arkalian about four or five months. I never met Kirkorian. I have known Brix about a year and a half, I guess, perhaps two years. I knew Brix in a social way prior to this transaction.

Brix called me up and told me to come down to his office. I went down there and met Stumpf. He introduced me to Stumpf. No one else was present. We had a conversation. It was some time early in August, about 10 o'clock in the morning. Stumpf led the conversation off. He told about the various experiences he had—successful and unsuccessful experiences in the bootlegging racket. Then there was some conversation of syrup, as to the practicability of using syrup as a distilling material—stuff out of which alcohol could be made—as a substitute for sugar. Something was said about whether syrup would be as well in making alcohol as sugar, and comparison of prices, comparison of the taste after it was finished, and so on.

That is about all. I don't remember any special thing Brix said. Brix asked a question or two along the line of the grape concentrate and syrup and sugar, and so on. I don't remember anything else that was said at this time. Nothing definite was arrived at.

The next meeting was when Brix brought a Mr. Denning out to my house one evening. Denning is a friend of Brix from Sacramento. Denning followed Brix in his car. The only conversation was on the practicability of selling port wine and brandy, brought up by Mr. Denning. They asked me if I had any brandy or port wine on hand. I believe Denning said he had a pretty good

(Testimony of G. H. Malter)

sale for port wine. Brix asked if I had any on hand. I told him no, outside of for my own personal use. That was about the entire conversation.

A few days later Brix called me up. I went down to his office. I met Denning and Stumpf and Brix. Stumpf said they had two stills running, and he was intending to start another one. Denning told about some activity of his along the same line. I don't remember Brix taking any part in the conversation at that particular time.

Q. Well, go ahead and tell all the conversation. You know what happened. Tell the Court and Jury what happened.

MR. SAVAGE: I object to those remarks of counsel's. I ask that it be stricken from the record.

The court denied the motion and overruled the objection, and defendant Coates then and there, through his counsel, duly excepted to the ruling.

Well, if I remember, we left Brix's office and went to Brix's house. Stumpf said something about starting his third still. He said the output of these other two stills that he was running was completely taken up, and this third he was intending to start, he was trying to find a distributor for. The conversation drifted around where Brix and I were to supply the wherewithal to get the still going and Denning was to take a one-fourth interest in the still for distribution of the stuff. Stumpf was to be manager and was to supply a truck to deliver the liquor, or something to that effect. At that meeting nothing was said about putting up money or financing the proposition.

(Testimony of G. H. Malter)

That was at another meeting between Brix, Stumpf and myself, after Denning left. That meeting lasted all day, but the whole thing was given up to a business meeting. We had a meeting and then just talked about other things. In the business meeting it was talked that Denning was to distribute this new supply of alcohol, and that a week or ten days would probably elapse before he would have it ready or coming. Brix and I and Stumpf were to get together and fix that, settle that right up, right after Denning left. A day or two later Brix and I went out to Cap Olson's on Winery Avenue, about eight miles or so from my place. His initials are A. J. Olson. It is not Olie Olson, but his brother.

I introduced Cap to Brix. There were a lot of apricots that Olson had in sweat-boxes, and the suggestion was made as to what good apricot brandy they would make. The rest of the conversation was more or less general. Brix said something about a man who could make a still, and Cap Olson said something about his brother. That is Olie Olson. After we got through there we went back to town.

The next time we met was when Brix called me up and wanted me to come in to his house. He had a couple of men there who were also after the job of distribution. Stumpf was there. I don't know whether they were his friends or Stumpf's, but they were there. At that time we had no definite conversation in connection with this enterprise. Nothing was said except that they were to meet us later. I never saw these other men again.

Stumpf and Brix and myself had another meeting. All these meetings were in August. At this meeting Cap

(Testimony of G. H. Malter)

Olson was present. It was agreed that Stumpf and I were to go out to Cap Olson's. We went out to Cap Olson's, and Cap said that he would get hold of his brother to make the still, and an appointment was set for the next day or two for his brother to come over to my house and meet there at 2 o'clock. We told Brix about the meeting, and we were all supposed to be there at 2. I was there and Stumpf arrived at 2. So did Olson. Stumpf asked Olson a lot of question on what he knew about making a still. I mean Olie Olson. Brix arrived and said that he had somebody else in the car, and said he had to go to Sanger, or some place or other, and he could not stay, but to come in, and put in \$500. That was paid to me. Brix came in the house and only walked a few feet in. Stumpf and Olson stayed in the other room, so he gave me the \$500, and then Stumpf came out, and there was something to the effect that Olson had a flat tire, and Brix said he would send Olson out a tire. Then Brix left. And Stumpf and I went back to the other room with Olson. The tire arrived. It was put on Olie Olson's car. Stumpf, Olson and I sat and talked for a few minutes, and it was agreed that Olson should have \$100, so I gave Olson \$100 out of the \$500 that Brix had handed me, and gave Stumpf the other \$400. That is all that happened at that time. I don't believe I was ever out there with Brix.

The next time I saw Olie Olson, he had a lot of copper and a few tools. I gave him an old building to put them in. He put them in the building and left again. I saw him again after that, at my place. As to where the

(Testimony of G. H. Malter)

material should be used, Stumpf said he had several places in view he could get to put the outfit up on.

About this time Olie Olson began to manufacture an alcohol still. He was there during the process. He got various pieces together. Stumpf came out every three or four days and looked at it. Brix came out during that time. I saw him at the still or at the place where the still was being made. Stumpf, Brix, Olson and myself were there. They looked at it. Stumpf said Olson was not making it long enough and Brix said the soldering was terrible. Brix showed Olson how to do the soldering. He soldered a piece himself. I think Brix brought some solder out there.

After a while the stuff was moved over to Cap Olson's place. Later Stumpf said Cap Olson had changed his mind. Stumpf had given Olson \$100 but Olson paid it back. The tanks were moved over to Olson's barn where they remained for a few days. Then they were hauled to Cain's place about ten miles distant, where they remained possibly a month. Then they were taken over to another place that Stumpf had on the West Side. This was the Caruthers place. Then they were moved back to Cain's.

After this Denning returned to get the alcohol. Stumpf said it would be impossible to deliver it until later. There was a lot of quibbling on the price. Denning was trying to get the price reduced. Brix was saying that the outfit was expensive and that the price ought to be higher than what Denning suggested.

(Testimony of G. H. Malter)

I did not put up any money. I was supposed to put up some syrup when they got the tank set and ready to put the syrup in. The Caruthers ranch is located about ten miles west of town. I went out there with Stumpf and Coates. That was in October. When Stumpf got the Caruthers place he wanted two laboring men. I recommended Kerr. Coates recommended Andreas who had a truck and was to do the hauling. He was working for Coates at that time. Stumpf and Coates and myself went down near the Caruthers place at one time. We rode by the place a couple of times. That was sometime in October. We drove by the place and went in the place once. First we drove by and later we went in. I think Jess Coates and myself were together when we went in. We saw some tanks and equipment and some men working. They were Kerr and Cannon. They were setting up tanks and cleaning the barn out. Stumpf at that time said he had paid \$375 as rent for the ranch.

I have seen this, Government Exhibit No. 5, before. I saw it at my house sometime in October. Coates, Stumpf and myself were present at the time. Coates wrote down some of the items of the expenses that had been put out. Stumpf gave him the items.

Q. Has that card been under your control at any time since that, since he wrote on the card that you are speaking of? Have you had it under your control or in your possession at any time?

A. Yes.

It was left on the table and I accidentally picked it up in a corner some four or five months later. That is the card that Coates was writing on at the time.

(Testimony of G. H. Malter)

Here the yellow card, Government Exhibit No. 5, was offered in evidence by the Government. To this offer, the defendant Coates, through his counsel, objected on the ground that it was irrelevant, incompetent and immaterial, and that no proper foundation had been laid for its introduction, and that it had not been properly identified. The objection was by the court overruled and the defendant Coates then and there excepted to the ruling of the court.

The card, with the memoranda thereon, was thereupon read to the jury. It consisted of various alleged items of expenditure for labor and materials, etc.

I know about the time Stumpf went to San Diego. It was the first part of October. I talked with Stumpf or Coates in connection with the San Diego trip. I believe it was in Coates' automobile. The automobile was on the road some place around town here. Stumpf said he had a ranch out here that would make a good location for a still. Out near Clovis, so he had Coates drive us out there to look at the ranch. We looked the ranch over and came back to town. Stumpf said the owner of the ranch lived in San Diego and it would be necessary to go down to San Diego. I guess he went down for he said he did.

A lot of material was taken down to the Caruthers ranch and remained there three weeks or a month. Then it was taken back to the Cain place, partly back to the Cain place, and partly to my place. Things weren't going well between Stumpf and the laborers. IT seemed they put up a tank and then the Power Company men came to fix up the wire. They had to take the tanks down so that the Power Company men wouldn't see them.

(Testimony of G. H. Malter)

At this point the defendant Coates asked for an order striking out the latter part of the testimony on the ground that it expressed the conclusion of the witness.

THE COURT: Is this the result of a conversation, what was told you?

A. Yes, sir.

Q. By whom?

A. By Stumpf.

THE COURT: Alright. Overruled.

The court denied the motion to which ruling the defendant Coates, through his counsel, duly excepted.

Coates told me that Andreas had reported to him that one of the power company men or somebody looked into or saw the tank down there and saw this work going on beside the barn and "then Coates and I decided that it would be a better idea to get out of the place, it might be dangerous."

We went over and told Andreas to move the stuff out. We arrived at Andreas' house and Coates went up and told him what we wanted.

Then we moved all the stuff away from the Caruthers ranch, taking part of it back to Cain's place and the rest of it to my place.

The equipment, etc., was next taken to the El Senora place. Stumpf said he had rented it. He said he had paid \$300 rent for it to some lady with whom he had a quarrel.

From the El Senora place, the equipment, etc., was taken to the Foss ranch. I am acquainted with Mr. Foss now but I did not know him at the time. All I know about renting the Foss ranch is what Stumpf said. He told me about it. He said he had a very good ranch up in the

(Testimony of G. H. Malter)

mountains and he felt it was the proper place to move to. He said the cost was \$750 but that he had Jewed the man down to \$500. The material, equipment, etc. were moved up to the Foss ranch some time in December. I did not help move it. I gave it to Stumpf. He was the only man I gave part of the still to. I have seen these, Government Exhibits Nos. 1, 2 and 3, before. That looks like the still that was moved to the Foss ranch. Stumpf told me that there had been produced in that still at the Foss ranch about a gallon of alcohol. He brought a sample of it down to Fresno. He gave me a taste of some liquor. I don't know anything except that Stumpf told me. Stumpf, Coates and myself were present. Stumpf said that this was some alcohol. This was in January. Coates and I tasted it and it was pretty strong. Coates seemed to like it.

Whereupon the defendant Coates asked that the last sentence of the statement be stricken out on the ground that it was not responsive and that it called for the opinion and conclusion of the witness. The motion was denied. The defendant Coates thereupon, through his counsel, duly excepted to the ruling of the court.

Coates took two or three drinks of this.

Q. What did he say at the time that he took these drinks?

A. He thought that it was pretty good. I mean, he said it was pretty good.

Q. Anything else? Anything said in reference to getting any of it, any more of it?

To which question the defendant Coates, through his counsel, then and there objected, on the ground that the

(Testimony of G. H. Malter)

question was leading. The objection was by the Court overruled to which ruling the defendant Coates then and there excepted.

A. He wanted Stumpf to get some, to have drinking liquor. He suggested that Stumpf get five gallons. He said, "Well, can't you get five gallons of this?"

There are some expenses incurred that are not included in that card according to what Stumpf told me. I think Stumpf bought one hundred turkeys which cost a hundred or a hundred and a quarter or something like that.

Whereupon defendant Coates through his counsel asked that the testimony regarding the purchase of turkeys be stricken from the records as irrelevant, incompetent and not material. The motion was denied by the Court. Whereupon defendant Coates duly excepted to the ruling.

He bought one hundred turkeys from Kerr. I know that of my own knowledge.

At a conference between Brix, myself and Stumpf, it was agreed that Stumpf should get \$10 a day. That was at Brix's service station sometime in August 1930. There was also a steam boiler not included in that card.

I have been engaged in the grape syrup business. These tanks were all bought down here at the Celo Winery. None were furnished by me. Eight tanks were bought, all at the Celo Winery. The tanks were taken to Cain's place and stayed there several weeks. The tanks were all knocked down. I believe Kerr and Andreas and Cannon set up some down at Caruthers. First they were taken to Olson's, then to Cain's. Then back to Cain's, then down to Caruthers. Then they were taken back to Cain's.

(Testimony of G. H. Malter)

CROSS-EXAMINATION

At this point Mr. Curran cross-examined Mr. Malter relative to the extent of his reading of the transcript of the testimony of witness Stumpf. Mr. Malter testified in substance that he read excerpts out of several volumes but no complete volume; that Mr. Davis directed his attention to one or two excerpts; that he possibly read 30 or 40 pages, but he did not think it was quite that many.

It is not necessary to get permits in order to engage in the business of manufacturing grape concentrates. I never knew Congressman Barbour. No one ever told me that Barbour had obtained a permit for me to operate or run a grape concentrate plant. I never employed Barbour in any capacity. These burners concerning which I have testified were never taken to Caruthers.

The grape concentrate deal was mentioned by Coates to me. The only time that I remember that the grape concentrate deal was being mentioned was when Mr. Coates used it as an alibi once to get away from home.

The defendant Coates thereupon asked that the last statement of the witness be stricken from the record as the opinion and conclusion of the witness. The Court denied the request. Whereupon the defendant Coates duly excepted to the ruling of the Court.

Coates and I were at his house and Coates said, "We have to go out and inventory some tanks with some syrup in them." Coates and myself and Mrs. Coates were present and it was at Coates' house.

I am in the grape concentrate business now. The last several years I have been experimenting with grape or juice concentrate. When I got interested in this enter-

(Testimony of G. H. Malter)

prise with Ted Brix and Stumpf, I was interested in grape concentrates. I had some on hand a couple of years old. I was in that business before going into this deal with Ted Brix. My idea was to sell the grape concentrate that I had on hand to men who were in illegal, illicit business, and if they wanted to use it to make alcohol, it was all right with me. The man Denning questioned me about the amount of port wine, or other wines, I had on hand. He indicated an intention to purchase a considerable quantity from me.

I know a man named Ed Nichols of the Central California Detective Agency. I did not on the 26th day of September, 1931, at my place in this county, state to Nichols that I had been introduced to Stumpf at Ted Brix's office, and at the time Brix told me Stumpf had a very good deal in wine and he believed that Stumpf would be able to handle all the syrup, grape concentrates of mine. At that time and place, however, I did tell Mr. Nichols that there was no definite agreement made or anything whatsoever. I did not tell Nichols at the same place that. All I told the United States authorities was that when I met Stumpf and Brix, all the conversation was about grape concentrates.

I think I had a conversation with Nichols about the 1st of October of this year, just a few days ago. I didn't tell Nichols in substance and in fact that Ted Brix entered into this transaction with Alexander Stumpf thinking that it was to be a legitimate deal the same as I had entered into with Stumpf. I didn't tell Nichols on October 5th, 1931, at any place that the deal started out as a legitimate juice deal and when it became a still racket, Brix and my-

(Testimony of G. H. Malter)

self quit. That is what Nichols wanted me to say but that is not what I said. I said nothing like that whatsoever. At the first conversation, Stumpf did all the talking. Brix didn't get much chance to say anything. Stumpf was boasting about what a big operator he was. The next meeting was when Denning was present. I was in the grape concentrate business in August, September, October and November of 1930.

In this enterprise I didn't put up any money. I was to put up some syrup. That was my contribution. Stumpf's contribution to the enterprise was his great executive ability, or something, or technical knowledge. My contribution to the enterprise was syrup. Ted Brix's contribution to the enterprise was money. When Brix got out of the picture and Coates came into it, Stumpf's contribution was to be executive ability and brains. My contribution was to be money and Coates' contribution was to be money. When I said Saturday that I was supposed to put up syrup, it was in reference to Brix. In all, I put up \$1800. I didn't put up a cent of that while Brix was in the picture. When I talk of money put in by me I do not mean money contributed. Where I say I contributed \$1800, I mean that I put up \$1800 in cash into the hands of Stumpf. I actually gave him \$1800 in cash. The only expenditures I made Stumpf gave me the money to pay. I got receipts from Stumpf for money expended. Stumpf hijacked or stole the still from the Foss ranch. I know that he did.

When I paid moneys amounting to \$1800 to Stumpf, I knew he was a convict. I knew he was a bootlegger. I

(Testimony of G. H. Malter)

knew that Stumpf had lied to me. I knew that before I gave him this money.

When the still was taken from the Foss ranch by Stumpf it was placed in some bushes but not on my property. I took Mr. Whitfield, the prohibition agent, to the place where they were hidden. I knew where they were hidden. The man who put them there told me they were there. His name is Cannon. He worked on my ranch. I said Stumpf was instrumental in having the still hijacked from the Foss ranch. The still was put in the bushes on my place and Mr. Whitfield picked it up half an hour after it was put there. It was arranged that Mr. Whitfield should pick it up there before it was put there. I made the arrangements with Mr. Whitfield.

I have known the defendant Coates for many years. Our relations were always purely social. I had no business with him until the transactions concerning which I have testified. In the arrangements in the beginning with Brix, Stumpf, myself and Denning, Coates was not in on that; had nothing to do with it. Coates had nothing to do with the arrangements until after Brix had gotten out. I don't know that Stumpf testified that Coates never at any time knew that Brix had been in the deal. I didn't read that part of his testimony. I remember talking to you Mr. Savage in your office along about the 10th of February about this situation.

Q. Do you remember at that time telling me that you had him where he could not say a word because you had it in Coates' own handwriting where it showed what it cost to make alcohol and that he was engaged in the still

(Testimony of G. H. Malter)

business and that you had that memorandum and you were going to keep it?

The question was objected to as irrelevant, immaterial, incompetent and not proper cross-examination.

There is nothing conflicting. It cannot be used for impeachment.

THE COURT: Well, it seems to be an immaterial matter.

MR. SAVAGE: Well, this is preliminary, of course. I want to know if there is any other memorandum in existence than this.

THE COURT: Well, that is a question it is not necessary to answer. Sustained.

MR. SAVAGE: Note an exception please.

I had a conversation at one time with Coates and the witness Morin at the Fresno Hotel. Coates had a room there and I was living there too at that time. Mr. Morin came in to see Coates. I don't know whether I arrived there just before Morin or just afterwards, but there was no conversation of any serious character that could have been carried on. I left and came back later.

Q. Now tell, relate what took place after you came back, what you saw and what happened?

The question was objected to by the defendant Coates on the ground that the same was irrelevant, incompetent and immaterial, which objection the Court overruled and to which ruling the defendant Coates duly excepted.

A. They were never capable of conversation. They were intoxicated.

Whereupon the defendant Coates, through his counsel, asked that the answer of the witness be stricken out, and

(Testimony of Howard N. Foss)

the motion was denied and the said defendant Coates again duly excepted to the ruling of the Court.

When I came back, they were both lying on the bed.

HOWARD N. FOSS,

a witness called on behalf of the Government, being first duly sworn, testified in substance as follows:

My name is Howard N. Foss. I have been in the real estate and building business and was in such business in the fall of 1930. I had a transaction with Mr. Stumpf with reference to selling him a piece of property up here near Auberry. I sold him 480 acres, 360 acres in one parcel, and 120 acres in the second parcel. The paper which you show me is a duplicate of the original agreement of sale. The signature on it is mine. It contains the terms of the agreement as to the purchase of the place. There has been no change. The ranch is about 25 miles from the vineyard country around Fresno. It is up in the mountains. There was nobody with Stumpf when we made this deal. He was introduced to me by a man named J. D. Bell.

CROSS-EXAMINATION

I have lived in Fresno 26 years and have been engaged in the real estate business. I know the people of Fresno quite thoroughly. When Stumpf bought the ranch he told me he was going to use it to establish a dude ranch. Stumpf told me he had a backer, a financial backer, abundantly able and willing to go ahead with the business of establishing a dude ranch. He told me this fellow was Malter. I had known Malter as a child but had not seen him for 10 or 15 years. After this whole thing had

(Testimony of E. A. Nichols)

transpired, I met Malter there. He was summoned here the same as I was before the Grand Jury. The first time I met him was in connection with this transaction. I never saw Coates up in the hills on the Foss ranch. I met Coates for the first time yesterday. I never heard Coates' name mentioned in connection with this deal. Other than Mr. Malter, nobody was mentioned.

After all the foregoing witnesses had testified on behalf of the Government, the Government announced that it rested.

E. A. NICHOLS,

a witness called on behalf of the defendants, having been first duly sworn, testified in substance as follows:

My full name is E. A. Nichols. I am the owner of the Central California Detective Bureau in this city. I know the witness Hugo Malter. I saw him on or about the 26th day of September of this year out at his ranch.

Q. And I will ask you if at that time he told you that Ted Brix introduced him to Stumpf and at that time Ted Brix said, "Alex Stumpf here has a very good deal in mind and with some assistance he, Alex Stumpf, believes that he will be able to handle all of the grape syrup concentrates of yours?" Did Mr. Malter say that such a conversation took place?

To which question the Government objected on the ground that no proper foundation had been laid.

Q. By MR. CURRAN: Did Mr. Malter say that such a conversation took place?

MR. McNABB: Just a moment.

A. Yes, sir.

(Testimony of E. A. Nichols)

MR. McNABB: Just a moment. We object to that as not being proper rebuttal. In the first place that is, I think, almost identical with the testimony of the witness on direct examination. He talked about the grape syrup being made into alcohol.

THE COURT: It is identical with the testimony of the witness Malter.

MR. McNABB: Yes.

THE COURT: On direct examination.

MR. McNABB: On direct examination it was to that effect, anyway, that he had grape concentrates and they discussed the matter of making it into alcohol.

THE COURT: Yes, that is correct. That is according to my notes. They talked about concentrates.

MR. CURRAN: Your Honor, on cross-examination I asked that very question of Mr. Malter and his answer here in the record, page 255 is 'no'.

THE COURT: Well, sustain the objection.

MR. SAVAGE: Note an objection on behalf of Mr. Coates.

The witness Malter told me that he had told the United States authorities that when he met Stumpf and Brix on the first occasion all the conversation was about concentrates. I saw Malter about the first of October at his ranch. I was in the employ of the defendant in this case at that time. I went out to question the witness Malter and I did question him. I didn't do any work for Malter until February of this year. I worked for both but not at the same time. The first time I was in the employ of Frank Curran, the attorney for the defense. Malter told

(Testimony of W. D. Coates, Jr.)

me that the deal started out as legitimate juice deal and it became a still racket and that he had Brix quit.

CROSS-EXAMINATION

I was employed by Mr. Curran about September 23rd or 24th, 1931. I was employed by Malter about the 14th or 15th of February of this year. I may have worked a week or ten days for Curran. It was an endeavor to be blackmailed by a certain party. Mr. Curran said he had just entered into the case. He asked me to interview as many of the parties as possible to get the facts of the case. This was one of the interviews I had at the time. I have been employed just the two times I mentioned. I went out to the Foss ranch to examine the still but the still had been moved before I knew anything about it. I went out with Mr. Foss.

I remember, Mr. Savage, of going to your office while I was employed by Mr. Malter. That was prior to any indictment. I do not remember telling you that some of the boys at the Foss ranch had not received their wages and unless they were paid their wages they would turn State's evidence. I don't recall telling you that the best thing Coates could do was to pay \$600. It might have been mentioned about getting the money but no such conversation as you mentioned was said.

W. D. COATES, Jr.,

a witness called on behalf of the defendant Coates, after being first duly sworn, testified in

My full name is W. D. Coates, Jr. I live at 3901 Huntington Boulevard in Fresno and have lived there off and on for forty-two years. I know Hugo Malter. I remem-

(Testimony of W. D. Coates, Jr.)

ber an occasion of his visit to my house in October for dinner. It was the 26th of October. I had a conversation with Malter during the evening. I have known him ever since he was a child. After dinner my son Lloyd Coates had gone upstairs to the bath room or somewhere for some purpose. I had gone in the living room and Malter followed me in. I asked him some very pertinent questions in reference to the grape concentrate business. I asked Malter what he was doing and what Lloyd and he were doing together in the grape concentrate business. I asked him the question because he had been in my house several times and had never mentioned the subject at all. Lloyd had talked about it from time to time, about it to his mother and myself and I was extremely interested. I asked him what he was doing, what they were doing in the concentrate business, and was everything that they were doing done legally, and he absolutely assured me that it was to the extent that he told me that he had, through the hard efforts of Henry Barbour, Congressman, acquired the proper legal permits to make grape concentrates. I said, "Well, is it perfectly all right if you make grape concentrate, and what do you do with them afterwards?" He said, "It is just the same as a man who ships a carload of wine grapes from here, it is none of his affairs what is done with it after they reach their destination. As long as I am legally making these grape concentrates I am not interested in what becomes of it." That was all the conversation. I have talked with the attorneys, the Government representatives, with Mr. Whitfield, about this case in Mr. McNabb's office. We had gone up there, Mrs. Coates and I had gone up there to talk with

(Testimony of Edna Pearl Coates)

Mr. McNabb in a general way on the subject of the case. As we were about to leave the office I was nearest the door, Mr. Whitfield was nearest there and adjacent to me was Mr. Davis.

At this point the Government objected to any further testimony on the part of the witness on the ground that no foundation had been laid.

MR. SAVAGE: The purpose is to show that Mr. Whitfield told Mr. Coates that he believed that Mr. Coates started in a grape concentrate syrup deal in the beginning.

THE COURT: Is that to be controlling in this case, do you think?

MR. SAVAGE: It throws a lot of light on Mr. Whitfield's testimony.

THE COURT: Mr. Coates' complicity, his connection with this matter, whether guilty or innocent, should be judged by the evidence, certainly not by Mr. Whitfield's opinion. Objection sustained.

MR. SAVAGE: Note an exception.

EDNA PEARL COATES,

a witness called on behalf of the defendant Coates, after being duly sworn, testified in substance as follows:

My full name is Edna Pearl Coates. I am the mother of Lloyd Coates. I heard Malter testify in court that he used an alibi to me, used grape concentrates so as to put me off my guard. I never had a conversation with Malter in which grape concentrate was ever mentioned. I have never talked to Malter about grape concentrate. I have never talked to Malter about this conspiracy.

(Testimony of N. Lindsay South)

CROSS-EXAMINATION

I heard the testimony about the night Malter took dinner there. I don't believe my son mentioned concentrates or going with Malter that night at all. My son had told me very freely about concentrates before. He had told us, his father and me. We talked very freely. Malter didn't mention it at all. My son didn't keep telling me all the time that he was in the grape concentrate business, he told me and he told his father that he had gone into the grape concentrate of grape syrup in which he thought that they were one and the same. That he had gone into that business. Nothing further was said for a little while. One time I asked him what he had done. He said, "I don't think anything has been done so far." When he told us both of us tried to persuade him not to enter the business for the reason that he knew nothing of it. It was foreign to him in every respect. He said that he didn't have to know anything about it. He said, "I have absolute confidence in Hugo Malter. He knows the game from A to Z." He did say that Malter had contracted with a man to handle all of that, that they could possibly put out, and that he also went into very minute detail of telling me how the fruit, not only the grapes but any kind of fruit that was going to waste that they might, Mr. Malter said that he might apply it into this, and that it was so cheap and going to waste that it was a wonderful outlet. He seemed to think that there was going to be a fortune in it.

N. LINDSAY SOUTH,

a witness called on behalf of the defendant Coates, being first duly sworn, testified in substance as follows:

(Testimony of N. Lindsay South)

My full name is N. Lindsay South. I was present at a time when Coates and Malter testified when Coates came to my house and asked for a revolver. It was in December 1930, I believe. Just Lloyd and Hugo and myself were there. Stumpf was on the outside. He was never inside. I have no recollection of Stumpf even being there. They came in there very hurriedly, stayed for a few minutes and either Coates or Malter conveyed the idea that they were going up in the mountains to find out what had become of his investment there and there was some talk about bad gunmen up there. I understood Malter had a pistol but Coates didn't have any and they asked me if I had one. I told them that I had one, one that was a good one, the only kind I would keep. He said he was going to go there and find out, it didn't make any difference whether he would come back alive or not. It was Coates who said that so I gave him a pistol that I had, a Colt. They mentioned the fact that they didn't know what became of Stumpf and the money—they had been trying to locate or find out where this so-called investment was. This conversation was about nine o'clock or half past nine in the evening.

Since this trial started I have talked with Hugo Malter on several occasions. I talked with him on Wednesday evening. That would be October 7th. I talked with him on Wednesday and Thursday and Saturday. Malter came to my house; I did not send for him. I had a conversation with Malter regarding the proceedings at this trial.

Q. Did you and Malter have a discussion at that time and place in which Malter in substance told you that he had been given testimony in this trial as it was typed by

(Testimony of N. Lindsay South)

the reporters and that he was directed to read it, and in substance also told that by the Government representative, that the testimony of Mr. Stumpf was not agreeing with what Malter had told them and he wanted him to read it to corroborate Stumpf's testimony if possible, and to reconcile those discrepancies before he went on the stand?

A. Yes.

At this point the defendant Coates, through his counsel, made an offer of certain testimony as follows:

At this time I offer to prove by this witness that Mr. Hugo Malter told this witness on Tuesday night, that the Government not only gave him the testimony but talked to him freely about it, both Mr. Davis and some of the other men in the office and Mr. McNabb; that on Thursday night he came and told Mr. South substantially the same thing and that preparatory to going on the stand on Friday Mr. Malter told Mr. South at that time that he had been kept up with the Government for a long time and that the testimony had not all been written up and that they called in the reporter and the reporter read the unwritten part of his testimony to Malter and that again on Saturday night Malter came to South's house and told South substantially the same thing, and that Malter also told South that Mr. Davis told Malter that he might be out of the conspiracy charge all right, but it was a much more serious thing, that perjury was a much more serious thing, and he should be very careful how he testified.

THE COURT: Now are you attempting to show that Mr. Malter has made any false statements in his testimony on the witness stand?

(Testimony of J. L. Broad)

MR. SAVAGE: Yes, exactly. I asked him those questions and he denied all of them.

THE COURT: Well, I mean outside of those questions?

MR. SAVAGE: Yes. I—

THE COURT: In other words, do you agree that his testimony corresponds with the witness Stumpf?

MR. SAVAGE: Oh, absolutely not. There are many discrepancies.

THE COURT: Very well, do you charge that he changed his testimony in order to agree with the testimony of the witness Stumpf?

MR. SAVAGE: No, I don't say that.

THE COURT: All right. That is enough. The objection is sustained. It is a contradiction on an entirely different matter.

MR. SAVAGE: Well, the proffer was what I made and I understand it was refused?

THE COURT: Yes.

MR. SAVAGE: Please note an exception.

J. L. BROAD,

a witness on behalf of the defendants, after being duly sworn, testified in substance as follows:

My full name is J. L. Broad. I live in Fresno and have lived here about forty years. During the last fifteen or twenty years I have been peace officer. I am now Chief of Police of the City of Fresno. I know Alexander Stumpf. I have known him about fifteen years. I know the general reputation of Alexander Stumpf for truth,

(Testimony of J. L. Broad)

honesty and integrity in this community. It is bad. I would not believe him under oath.

CROSS-EXAMINATION

I have known Alexander Stumpf for about fifteen years. He has been a notoriously hard citizen all that time. He has been arrested and convicted and brought up before the courts many, many times. I don't recall how many times that he has been arrested but a great many *time*. I know that we have been after him many times but as to the number of times he has been arrested I would not be able to say. I know that he has been convicted of a felony twice. It is a matter of common knowledge all over Fresno that he is a notorious criminal. I have discussed him with a great many people in the last couple of years. With the people I have discussed it with I would say that his reputation was extremely bad for a number of years.

Here it was stipulated between counsel that if the witness Dr. Ray, who on account of illness was unable to be present, would, if present and under oath, testify that in October 1930 he had a talk with Mr. South with reference to getting someone to invest in the stock of his concern—his medicinal tonic concern manufacturing medicinal preparation of some kind—that some time during the month of October South brought Malter and Coates down to the plant. That in the conversation that occurred there Coates said in the presence of Malter that they had their money tied up in a concentrate business, and just as soon as they could get it out of the concentrate business or out of this business that it was invested in that they might be interested in the stock.

(Testimony of W. G. Phillips)

W. G. PHILLIPS,

a witness called on behalf of the defendant Coates, testified in substance as follows:

(This witness had been called by the defense and testified out of order during the taking of testimony on behalf of the Government.)

My name in full is W. G. Phillips. I reside at Hanford. I am a petroleum chemist. I have been in the oil business for twenty-five years. My present business is refining. I have a refinery. I merchandise the Kettleman Hills gasoline. I know defendant Lloyd Coates. I have known him six years. I have had various business transactions with Coates during that period. I met Hugo Malter once. It was about a year ago the 15th or 20th of October, 1930. I met him at Coates' house about nine P. M. Malter and Coates and myself were present. I heard a conversation between Coates and Malter with reference to a grape syrup business—a proposition for entering into the manufacture of grape syrup was the topic of discussion between the gentlemen besides myself. The manufacture of grape syrup was discussed. Malter explained how grape syrup was manufactured. I think Malter knew I was a chemist. They discussed the character of raw material and the price thereof and the price of the finished product and they mentioned that the business carried a good return on the investment. The remark was made that raw material was so cheap that it was being fed to the hogs. By raw material I mean grapes from which the concentrate was to be made. Coates wanted to know if I would be interested financially

(Testimony of Francis Morin)

with such a project. He said something about my being interested to the extent of \$3000, a portion allotted to Coates and to Malter. The conversation lasted twenty or thirty minutes.

FRANCIS MORIN,

a witness called on behalf of the defendant Coates, testified in substance as follows:

(This witness had been called by the defense out of order during the taking of testimony on behalf of the prosecution.)

My full name is Francis Morin. I reside at Alameda, California. I have resided about three and one-half years there. My business is the refining of oils, mineral oils. I know defendant Coates. I have known him for about three years. I have done business with him most of that time. I have met Hugo Malter. I met Malter on the 12th of December of last year at the Hotel Fresno in this city. I had to visit Coates on business. He was at the hotel and I called on him there. I called on him about the oil business. Malter was there. Malter told me at that time that he and Coates were in the syrup business. I don't remember what kind of syrup business. In the conversation after Malter had mentioned that they were in the syrup business, Coates and I were discussing a business deal whereby he was purchasing quite a volume of lubricating oil, and it so happened that he wanted that oil packed in five gallon cans. I wasn't familiar with the price of cans, nor was Coates. Malter volunteered the information and was very definite that those cans could be purchased for fifteen cents apiece in the volume we were

(Testimony of Francis Morin)

discussing. He said he knew it because he was familiar with the purchasing of cans. He mentioned that in the syrup business it was necessary to have his cans lacquered on the inside. They were a little more expensive but the plain cans he was sure could be purchased for fifteen cents. I took his word for that. Later on I found that in completing arrangements for the deal, purchasing cans, it meant one hundred and two hundred dollars difference to me, which naturally I had to stand because we made a definite arrangement. This was on the 12th of December 1930.

At this point all the defendants rested.

At this point the court announced that counsel might take two hours on each side to argue the case and that the defendants must arrange the time to be taken by each among themselves.

Counsel for defendant Coates entered no objection to this ruling of the court and made no request for more time to argue the case.

MR. McNABB: Do I understand now that all defendants rest at this time?

MR. SAVAGE: Yes.

MR. CURRAN: I don't know whether it is a proper thing to do or not, but I will take exception to the ruling of the court limiting the time of argument as being prejudicial to the defendant Brix.

THE COURT: You want more time, is that the idea.

MR. SAVAGE: Exception.

MR. LINDSAY: I would like to have more.

THE COURT: Gentlemen, I feel this way, that the facts of this case, or rather the questions that the case

(Testimony of Francis Morin)

will determine or will turn upon is quite clear, and if, in fact, I question whether the limit given is not an excessive limit in view of the entire complexion of the case. I don't think any injustice is being done to anybody by reason of the limits based upon the time. *****

THE COURT: No, the case must go to the jury today.

MR. LINDSAY: Note an exception.

MR. SAVAGE: I would like to note an exception on the same basis.

The defendant Coates, through his counsel, then and there asked the court to instruct the jury to return a verdict of not guilty on the ground that the evidence was and is insufficient to justify any other verdict, than a verdict of not guilty, on the first count, the second count, the third count and the fourth count of the indictment.

The request was by the court denied, to which ruling of the court the defendant Coates then and there duly excepted.

The cause was thereupon argued by respective counsel and thereafter, and after being instructed by the court, the jury retired in charge of an officer to deliberate upon its verdict.

Subsequently the jury returned into court and announced its verdicts in due form, wherein it found the defendant Coates guilty as charged in the indictment on counts one and four of said indictment, and not guilty on counts two and three of said indictment.

Subsequently the defendant Coates was arraigned before the court for sentence and judgment and thereupon made and filed a motion for a new trial upon the grounds

(Testimony of Francis Morin)

(1) that the verdict of the jury is contrary to law; (2) that the verdict is contrary to the evidence; (3) that there was no evidence to support the verdict on the first count of the indictment; (4) that there was no evidence to support the verdict on the fourth count of the indictment; (5) that the court erred in denying defendant's motion for a directed verdict, and (6) that the court erred in the decision of certain questions of law during the trial of said cause and in limiting a time for the argument of said cause on behalf of the defendant Coates to forty minutes.

The motion for a new trial so made by said defendant Coates was by the court denied, to which ruling of the court the said defendant Coates, through his counsel, then and there duly excepted.

The court thereupon proceeded to pronounce sentence and judgment upon the defendant Coates and ordered that as a punishment under the first count of the indictment the said defendant Coates be imprisoned in the Federal Penitentiary, at McNeil's Island, for a period of one year and one day, and that in addition the said defendant Coates pay a fine of \$1000.00 under said first count of said indictment, and that under the fourth count of said indictment the said defendant Coates pay a fine of \$100.00.

IT IS HEREBY STIPULATED AND AGREED by and between the plaintiff above named, United States of America, and the defendant J. L. Coates, that the foregoing Bill of Exceptions contains all of the evidence

given or offered on the trial of the above entitled action, and correctly shows the proceedings had on said trial, and that said Bill of Exceptions is correct in all respects and may be by the Court approved, allowed, settled and made a part of the record on appeal by said defendant J. L. Coates herein.

Dated: January 7th, 1932.

SAMUEL W. McNABB,
United States Attorney for the Southern District of
California,

By P. V Davis
Asst. United States Attorney
David E. Peckinpah

Attorney for defendant and appellant J. L. Coates

The above and foregoing constitutes a true and correct Bill of Exceptions, which contains all of the evidence given or offered on the trial of the above entitled action, and correctly shows the proceedings had on said trial, and said Bill of Exceptions is correct in all respects and is hereby approved, allowed, settled and authenticated and made a part of the record on appeal by defendant J. L. Coates.

Dated: January 7, 1932.

Geo Cosgrave
United States District Judge for the Southern District
of California.

[Endorsed]: Filed Jan 7-1932 R. S. Zimmerman,
Clerk By Theodore Hocke Deputy Clerk

[TITLE OF COURT AND CAUSE.]

(1528-C-Criminal)

IT IS HEREBY STIPULATED by the United States Attorney for the Southern District of California that the time for filing the Bill of Exceptions for appellant, J. L. COATES, may be extended to and including December 10, 1931.

DATED this 5th day of November 1931.

SAMUEL W. McNABB,
U. S. Attorney

By P. V. Davis
Assistant U. S. Attorney

IT IS SO ORDERED

Geo. Cosgrave
U. S. DISTRICT JUDGE

[Endorsed]: No. 1528-C-Crim United States District Court Southern District of California Central Division United States of America, Plaintiff, vs. Alexander Stempf, et al, Defendants. Stipulation and Order Filed Nov 5 1931 R. S. Zimmerman, Clerk By Theodore Hocke Deputy Clerk

[TITLE OF COURT AND CAUSE.]

No. 1528-C-Cr.

ORDER

Upon application of the United States Attorney of the Southern District of California and P. V. Davis, Assistant United States Attorney for said District,

IT IS HEREBY ORDERED that the time within which the above named appellee, United States of America, through its said attorneys may file and serve proposed amendments to the proposed bill of exceptions of the defendant J. L. Coates is hereby extended to and including the 15th day of December, 1931.

Dated: November 30th, 1931.

Geo. Cosgrave

United States District Judge

[Endorsed]: Filed Nov 30 1931 R. S. Zimmerman,
Clerk By: Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

No. 1528-C-Cr.

STIPULATION

IT IS HEREBY STIPULATED that the Government may have until December 31st, 1931 in which to file proposed amendments to the respective proposed bills of exceptions of each of said appellants and that the court may enter an order herein extending the time accordingly.

Dated: December 21, 1931

SAMUEL W. McNABB

United States Attorney,

P. V. Davis

P. V. DAVIS,

Assistant United States Attorney
Attorneys for Plaintiff and Appellee.

David E. Peckinpah,

DAVID E. PECKINPAH,

Attorney for J. L. Coates and D. Arkalian, Appellants.

It is so ordered

Geo. Cosgrave

Judge

Dated Dec. 23, 1931

[Endorsed]: Filed Dec. 23, 1931 R. S. Zimmerman,
Clerk By: Thomas Madden, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

No. 1528-C

SUBSTITUTION OF ATTORNEY.

To the plaintiff above named, and to
SAMUEL W. McNABB, United States Attorney:

You will please take notice that defendant J. L. Coates,
above named, has changed attorneys in the above entitled
action, and that

DAVID E. PECKINPAH

has been and is hereby substituted in the place of the
undersigned as attorney for defendant J. L. COATES.

DATED: NOVEMBER 14th 1931.

H. A. Savage

Attorney for Defendant J. L. COATES

The above substitution of attorneys is hereby made by
the defendant, J. L. COATES, and the undersigned
hereby consent thereto.

DATED: NOVEMBER 14th, 1931

J. L. Coates

Defendant

N. Lindsay South

Attorney for Defendant J. L. COATES

[Endorsed]: Filed Nov 20, 1931 R. S. Zimmerman,
Clerk By Theodore Hocke Deputy Clerk

[TITLE OF COURT AND CAUSE.]

No. 1528-C-Cr.

MOTION FOR NEW TRIAL

Comes now the defendant, J. L. COATES, and moves this Honorable Court for a new trial, and for cause thereof says:

I.

The verdict of the jury is contrary to law.

II.

The verdict is contrary to the evidence.

III.

There was no evidence to support the verdict on the first count of the indictment.

IV.

There was no evidence to support the verdict on the fourth count of the indictment.

V.

The court erred in requiring the defendants to exercise a peremptory challenge with only eight prospective jurors in the jury box.

VI.

The court erred in denying this defendant's motion for a directed verdict.

VII.

The verdict on the first count of said indictment is unlawful and invalid for the reason that the transaction referred to and described as being the object of the conspiracy alleged in the first count of said indictment is the same transaction set forth and described as having been completed in the fourth count of said indictment.

VIII.

The court erred in overruling the objection of this defendant to the question asked the Government's witness Alexander Stumpf:

"Q And on a card identically like that, yellow card that you see there?

"A Yes, sir.

"Mr. McNABB: We offer it in evidence if the Court please.

"MR SAVAGE: Well, I want to object to the admission of that in evidence, and also, to the method of examination of this witness at this time." Rep. Tr. pg. 326.
And permitting the same to be received in evidence.

IX.

The court erred in overruling the objection of this defendant to the question asked the Government's witness Alexander Stumpf:

"Q Now, I will ask you what name you introduced Mr. Coates to Proctor and Kenny under?" Rep. Tr. pg. 399.

And permitting the witness to answer the same.

X.

The court erred in making the following statement during the course of the trial, in the presence of the jury:

"THE COURT: It seems to me the presumption would be that everything was voluntary. And particularly with respect where the officers of the Government are concerned. It seems to me that would be immaterial at this time, and irrelevant and incompetent." Rep. Tr. pg. 403.

XI.

The court erred in admitting in evidence Government's exhibit No. 6. Rep. Tr. pg. 480. (The same being one-half gallon bottle of "mash".)

XII.

The court erred in denying the following motion of this defendant with respect to the testimony of Government's witness Fred Stribling:

"MR SAVAGE: May I make this further motion, that all this testimony be stricken from the record. As I understand the indictment there is charged that a conspiracy to possess and manufacture a still, not to manufacture liquor. A reading of the indictment will show that, the possession of a still without a permit, and engaging in the business of distillers without giving a bond and possession of a still in violation of section 25 of the National Prohibition Act. There is no question about the possession of liquor or manufacturing of liquor or alcohol or anything else." Rep. Tr. pg. 486.

XIII.

The court erred in denying and overruling the objection of this defendant to the testimony of the Government's witness Ferdinand Andreas:

"MR SAVAGE: May I at this time interpose an objection to all this testimony as incompetent, irrelevant, immaterial, not within the issues and not within the charge of the case. There is no charge here that there was anything done at Caruthers, but that they conspired to build a still at the Foss ranch." Rep. Tr. pg. 500.

XIV.

The court erred in overruling the objection of this defendant to the question asked Government's witness Ferdinand Andreas:

“Q What was said by Mr. Coates about your signing this affidavit?” Rep. Tr. pg. 515,
And permitting the said witness to answer the same.

XV.

The court erred in admitting in evidence Government’s exhibits 1, 2 and 3. Rep. Tr. pg. 547. (The same being parts of a “still”)

XVI

The court erred in overruling the objection to the question asked Government’s witness James Proctor:

“Q Well now, think that over carefully. I wish you would look at this statement here for the purpose of refreshing your memory.” Rep. Tr. pg. 621, line 17.
And permitting the witness to look at said statement handed him by the U. S. Attorney.

XVII.

The court erred in denying the motion of this defendant to exclude the Government’s witness G. H. Malter from the witness stand on the ground that he had read excerpts from the transcript of testimony of other witnesses for the Government, said transcript being furnished and showed to him by the U. S. Attorney. Rep. Tr. pg. 667 et seq.

XVIII.

The court erred in permitting the Government to introduce in evidence the statement of Olie Olson, Government’s exhibit No. 8, and in permitting the Government to read the entire statement to the jury. Rep. Tr. pg. 702.

XIX.

The court erred in overruling the objection of this defendant to the question asked the Government’s witness Wilbert G. Whitfield:

“Q Did not Mr. Brix offer to plead guilty?” Rep. Tr. pg. 743

XX.

The court erred in denying the motion of this defendant for permission to examine Government’s witness G. H. Malter as to the fact and circumstances of his reading the transcript of testimony of other Government witnesses, after all witnesses had been excluded from the court room. Rep. Tr. pg. 757, line 20.

XXI.

The court erred in denying the motion of this defendant to strike from the record the following statement of the U. S. Attorney to the Government’s witness G. H. Malter :

“You know what happened.” Rep. Tr. pg. 771, line 23.

XXII.

The court erred in admitting in evidence Government’s exhibit No. 5. Rep. Tr. pg. 798. (Yellow card)

XXIII.

The court erred in overruling the objection of this defendant to the question asked Government’s witness G. H. Malter :

“Q Anything else? Anything said in reference to getting any of it, any more of it?” Rep. Tr. pg. 817.
And permitting the witness to answer the same.

XXIV.

The court erred in denying this defendants motion to strike out the answer of the Government’s witness G. H. Malter :

“A The only time that I remember that the grape concentrate deal was being mentioned was when Mr. Coates used it as an alibi once to get away from home.” Rep. Tr. pg. 839, line 1.

XXV.

The court erred in denying the motion of the defendant Theodore Brix (in which this defendant joined) to exclude any and all of the testimony of Government's witness G. H. Malter, on the ground that after having been put under the rule, that he violated said rule by reading excerpts of the testimony of other Government witnesses, before he, the said G. H. Malter, was called to the witness stand by the Government, and that the U. S. Attorney furnished him the said transcript of testimony of other witnesses for the Government. Rep. Tr. pg. 851, line 10.

XXVI.

The court erred in making the following ruling during cross-examination of Government's witness G. H. Malter:

"THE COURT: That is enough along that line. The witness is clearly indistinct." Rep. Tr. pg. 899, line 23, the said ruling tending to hinder and prevent cross-examination of the Government's witnesses.

XXVII.

The court erred in sustaining the Government's objection to the following question asked Government's witness G. H. Malter on cross-examination:

"Q Do you remember at that time telling me that you had him where he could not say a word because you had it in Coates' own handwriting where it showed what it cost to make alcohol and that he was engaged in the still business and that you had that memorandum and you were going to keep it?" Rep Tr. pg. 928, line 9.
And preventing the witness from answering the same.

XXVIII.

The court erred in sustaining the Government's objection to the question asked defendant's witness W. D. Coates:

"Q. What was said at that time?" Rep. Tr. pg. 990, line 18,

And preventing the said witness from answering the same.

XXVIX.

The court erred in denying the proffer of proof made by this defendant, while defendant's witness N. Lindsay South was on the witness stand, as follows:

"Mr. SAVAGE: At this time, I offer to prove by this witness that Mr. Hugo Malter told this witness on Tuesday night, that the Government not only gave him the testimony but talked to him freely about it, both Mr. Davis and some of the other men in the office, and Mr. McNabb. That on Thursday night he came and told Mr. South substantially the same thing and that preparatory to going on the stand on Friday, Mr. Malter told Mr. South at that time that he had been kept up with the Government for a long time and that the testimony had not all been written up and that they called in the reporter and the reporter read the unwritten part of his testimony to Mr. Malter, and that again on Saturday night Mr. Malter came to Mr. South's house and told Mr. South substantially the same thing, and that Mr. Malter also told Mr. South that Mr. Davis told Mr. Malter that he might be out of the conspiracy charge all right but it was a much more serious thing, that perjury was a much more serious thing, and he should be very careful how he testified" Rep. Tr. pg. 1000.

XXX.

The court erred in overruling the objection of this defendant to the question asked the witness J. L. Broad by the Government on cross-examination:

“Q Everybody knew it?” Rep. Tr. pg. 1007, line 16,
And permitting the witness to answer the same.

XXXI.

The court erred in limiting the time for the argument on behalf of this defendant to forty minutes. Rep. Tr. pg. 1014.

For each and all of the foregoing reasons and errors this defendant, J. L. COATES, moves the Honorable George Cosgrave, Judge of said United States District Court, for a new trial of said cause.

Dated: October 24th, 1931

H. A. Savage

N. Lindsay South

Attorneys for Defendant J. L. Coates.

[Endorsed]: Filed Oct 24, 1931 R. S. Zimmerman,
Clerk By Francis E. Cross Deputy Clerk

[TITLE OF COURT AND CAUSE.]

No. 1528-C-CR.

PETITION FOR APPEAL

TO THE HONORABLE GEORGE COSGRAVE,
JUDGE OF THE DISTRICT COURT OF THE
UNITED STATES IN AND FOR THE SOUTH-
ERN DISTRICT OF CALIFORNIA:

J. L. COATES, your petitioner, one of the defendants
in the above entitled cause, prays that he may be per-

mitted to take an appeal from the judgment against him entered in the above cause on the 19th day of October, 1931, pursuant to the verdict of the jury given and entered in said cause on the 15th day of October, 1931, to the United States Circuit Court of Appeals for the Ninth Circuit; and your petitioner does hereby appeal from said judgment to the said United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith.

Your petitioner desires that said appeal shall operate as a supersedeas, and, therefore, prays that an order be made fixing the amount of security which said defendant, petitioner and appellant, shall give and furnish upon such appeal; and that upon giving such security all further proceedings in this Court be suspended and stayed until the determination of said appeal by the said United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that he be released on bail, in an amount to be fixed herein, pending the final disposition of said appeal.

Dated: October 24th, 1931.

H. A. Savage

N. Lindsay South

Attorneys for Petitioner and Appellant.

[Endorsed]: Filed Oct 24 1931 R. S. Zimmerman,
Clerk By Francis E. Cross Deputy Clerk

[TITLE OF COURT AND CAUSE.]

No. 1528-C-CR.

ASSIGNMENT OF ERRORS

Comes now J. L. Coates, appellant and one of the defendants in the above entitled cause, and files the following assignment of errors upon which he will rely in the prosecution of the appeal herewith petitioned for in said cause, from the judgment of this Court entered on the 24th day of October, 1931, to-wit:

I.

The judgment entered by the above entitled court against this defendant and appellant, because of his conviction by the jury on the first count of the indictment herein, is unlawful and invalid, for the reason that the verdict of the jury finding this defendant and appellant guilty of said first count is against the evidence.

II.

That the said judgment so entered by this Court against this defendant and appellant on the said first count of the said indictment is unlawful and invalid, for the reason that it is against the law.

III.

That the judgment entered by the above entitled court against this defendant and appellant, because of his conviction by the jury on the fourth count of the indictment herein, is unlawful and invalid, for the reason that the verdict of the jury finding this defendant and appellant guilty of said fourth count of said indictment is against the evidence.

IV.

That the said judgment so entered by this court against this defendant and appellant on the said fourth count of the said indictment is unlawful and invalid, for the reason that it is against the law.

V.

That the said judgment so entered against this defendant and appellant on the first count of said indictment is invalid and unlawful, for the following reason, to-wit: That the transaction referred to and described as being the object of the conspiracy alleged in the first count of said indictment is and was the same transaction set forth and described as having been completed in the fourth count of said indictment.

VI.

That the trial court erred in matters of law and in its decisions upon matters of law arising during the trial of this cause, to the prejudice of this defendant and appellant in the following particular, to-wit: That the said court erred in denying the motion of this defendant and appellant for a directed verdict in said cause.

VII.

That the said court erred in overruling the objection of this defendant and appellant to the question asked the Governments' witness Alexander Stumpf, and in permitting the introduction in evidence of Government's exhibit No. 4, as follows:

"Q And on a card identically like that yellow card that you see there?

"A Yes, sir.

"MR McNABB: We offer it in evidence if the Court please.

“MR SAVAGE: Well, I want to object to the admission of that in evidence, and also, to the method of examination of this witness at this time.” Rep. Tr. pg. 326.

The said exhibit is a yellow card upon which it is alleged that this defendant and appellant made notations of the cost of various items of machinery, etc., purchased for the alleged enterprise.

VIII.

The said Court erred in overruling the objection of this defendant and appellant to the question asked the Government’s witness Alexander Stumpf:

“Q Now, I will ask you what name you introduced Mr. Coates to Proctor and Kenney under?” Rep. Tr. pg. 399,

and permitting the witness to answer thereto as follows:

“A Why, I don’t remember under what name, but he gave me some name to introduce him to Proctor and Kenny.”

IX.

The said Court erred in making the following statement in the presence of the jury during the course of the trial:

“THE COURT: It seems to me the presumption would be that everything was voluntary. And particularly with respect where the officers of the Government are concerned. It seems to me that would be immaterial at this time, and irrelevant and incompetent.” Rep. Tr. pg. 403.

The above statement was made following a motion to strike out the answer of the witness Alexander Stumpf to the question asked him by the Government:

“Q BY MR McNABB: Now, has the Government offered you any inducement or immunity or anything of that kind?

“MR. CURRAN: Just a minute.

“A. No, sir.

“Q BY MR McNABB: By reason of your coming here to testify?”

X.

The said Court erred in receiving in evidence Government's exhibit No. 6. Rep. Tr. pg. 480. The said exhibit being a large glass container filled with a liquid which the Government's witness W. G. Whitfield testified (pg. 479) he secured from the gravity tanks on the Foss Ranch, April 8, 1931.

XI.

The said Court erred in denying the following motion of this defendant and appellant to strike out testimony of the Government's witness Fred Stribling:

“MR. SAVAGE: May I make this further motion, that all this testimony be stricken from the record. As I understand the indictment there is charged that a conspiracy to possess and manufacture a still, not to manufacture liquor. A reading of the indictment will show that, the possession of a still without a permit, and engaging in the business of distillers without giving a bond and possession of a still in violation of section 25 of the National Prohibition Act. There is no question about the possession of liquor or manufacturing of liquor or alcohol or anything else.” Rep. Tr. pg. 486.

Mr. Stribling testified that he was a chemist (pg. 481) in the Government service; that he tested the contents of Government exhibit No. 6, and found it to be mash con-

taining 3.24 percent alcohol by volume. He testified on cross-examination that he made the test sometime prior to April 17th; and that liquid like that would change from time to time according to conditions that surround it, and that the alcoholic content might increase, depending on the amount of sugar content and heat; and that he could not tell the alcoholic content of that liquid for the months of January and February, 1931; and that he would not say that the liquid had any alcoholic content three months prior thereto.

XII.

The said Court erred in denying and overruling the objection of this defendant and appellant to the testimony of Government's witness Ferdinand Andreas:

"MR. SAVAGE: May I at this time interpose an objection to all this testimony as incompetent, irrelevant, immaterial, not within the issues and not within the charge of the case. There is no charge here that there was anything done at Caruthers, but that they conspired to build a still at the Foss ranch." Rep. Tr. pg. 500.

Mr. Andreas testified (pg. 499) that he hauled some lumber, nails, hammers, two rolls of black paper, and some turkeys to the Caruthers place, and worked two or three days cleaning out the barn, tore out some manger and leveled up a place in the barn.

XIII.

That said Court erred in overruling the objection of this defendant and appellant to the question asked the Government's witness Ferdinand Andreas:

"Q What was said by Mr. Coates about your signing this affidavit?" Rep. Tr. pg. 515.

and permitting the witness to answer as follows:

"A Well, he wouldn't give me my pay check unless I signed that affidavit. So me and him—him and I, we drove down town, we tried to get a notary public's office, he wasn't around then, so we gave a check to his manager and told me to come in the morning to have it signed." pg. 516.

The affidavit purports to be an affidavit concerning the pink slip on the Andreas truck, alleged to have been purchased by the defendant Coates.

XIV.

The said Court erred in admitting in evidence Government's exhibits Nos. 1, 2 and 3. Rep. Tr. pg. 547. The same being parts of an alleged still.

XV.

The said Court erred in overruling the objection to the question asked the Government's witness James Proctor:

"Q Well now, think that over carefully. I wish you would look at this statement here for the purpose of refreshing your memory." Rep. Tr. pg. 621, line 17.

The statement handed the witness purported to be a statement signed by the witness and in the possession of the Government.

XVI.

The said Court erred in denying the motion of this defendant and appellant to exclude the Government's witness, George Hugo Malter, from the witness stand, on the ground that he had read portions of the transcript of testimony of other witnesses, furnished him by the Government, prior to his taking the witness stand; all witnesses having theretofore been excluded from the court room by order of the court. Rep. Tr. pg. 667 et seq.

XVII.

The said Court erred in permitting the Government to introduce in evidence the statement of Olie Olson, Government's exhibit No. 8, and in permitting the Government to read the entire statement to the jury. Rep. Tr. pg. 702. Exception was taken to the reading of the statement for the reason that the said Olie Olson was a defendant and alleged co-conspirator in this case, and that this defendant and appellant would not have the opportunity or privilege of cross-examining the said Olie Olson as to the said statement so read by the Government. The statement was to the effect that Olson met Coates several times out at the St. George Vineyard (Malter's ranch); portions of the statement being as follows: Rep. Tr. pg. 708

"Q When did Coates come out there?

"A He came out there some time after I had started building the still.

"Q Did you have a talk with him?

"A Yes, I had a little conversation with him. Coates did not know anything about this still at all. He had a proposition, he wanted to build a still, too.

"Q Did he say what kind of a still?

"A A whiskey still.

"Q What kind of still, size and what was he going to do with it?

"A He wanted to know about what it would cost, and I told him, I forgot just what I told him, but I didn't see him for quite a while and he never said anything more about it. He said he wanted a still that would run out quite an amount.

"Q Did he say where he was going to put the still, or did he give an order?

“A No. He didn’t know anything about the still I was putting up.

“Q When Coates first came out was Hugo Malter there with him? A Yes.

“Q Did Hugo say anything?

“A Malter in the presence of Coates said that Coates himself was going to put up the money for the still but Coates did not know anything about this one that I was building.”

The above statement purports to have been made on some day in April, 1931 (Rep. Tr. pg. 716) to the Government officers, and after the termination of the conspiracy, the indictment having been filed April 22, 1931.

XVIII.

The said Court erred in overruling the objection to the question asked the Government’s witness Wilbert G. Whitfield:

“Q Did not Mr. Brix offer to plead guilty.” Rep. Tr. pg. 743, line 3,

and permitting the witness to answer, as follows:

“A Mr. Brix did not offer to plead guilty himself, but—” Rep. Tr. pg. 744, line 6

“A Mr. Fenston said that he was willing to enter a plea of guilty to any misdemeanors on the charge, but he did not like to see the boy do a jail sentence for a conspiracy.” Rep. Tr. pg. 745, line 7.

XIX.

The said Court erred in denying the motion of this defendant and appellant, as follows:

“MR SAVAGE: I ask permission at this time to examine Mr. Malter as to the true facts.” Rep. Tr. pg. 757.

In regard to reading the transcript by the witness

Malter, the Government made a statement to the Court (Rep. Tr. pg. 756) as to the circumstances thereof, following which this defendant and appellant made the above motion.

XX.

The said Court erred in denying the motion of this defendant and appellant to strike from the record the following statement of the Government to its witness G. H. Malter :

“You know what happened.” Rep. Tr. pg. 771, line 23.

The full question is: “Q Well, go ahead and tell all the conversation. You know what happened. Tell the Court and jury what happened.” Objection is made to the confidential conversational style of the question.

XXI.

The said Court erred in admitting in evidence Government’s exhibit No. 5. Rep. Tr. pg. 798. The same purporting to be a card written upon by defendant Coates.

XXII.

The said Court erred in overruling the objection of this defendant and appellant to the question asked the Government’s witness G. H. Malter :

“Q Anything else? Anything said in reference to getting any of it, any more of it?” Rep. Tr. pg. 817, and permitting the witness to answer :

“A He wanted Stumpf to get some, to have drinking liquor.” The witness was referring to what the defendant Coates is alleged to have said.

XXIII.

The said Court erred in denying the motion of this defendant and appellant to strike out the answer of Government’s witness G. H. Malter :

"A The only time that I remember that the grape concentrate deal was being mentioned was when Mr. Coates used it as an alibi once to get away from home." Rep. Tr. pg. 839, line 1.

XXIV.

The said Court erred in denying the motion of the defendant Theodore Brix, in which this defendant and appellant joined, to exclude any and all testimony of the Government's witness G. H. Malter. Rep. Tr. pg. 851, line 10. The motion was based on the ground that the said witness had read portions of the testimony given by Government's witness Stumpf prior to taking the witness stand; all witnesses having been excluded from the court room at the commencement of the trial.

XXV.

The said Court erred in making the following ruling, during cross-examination of the Government's witness G. H. Malter:

"THE COURT: That is enough along that line. The witness is clearly indistinct." Rep. Tr. pg. 899, line 23.

XXVI.

The said Court erred in sustaining Government's objection to the following question asked Government's witness G. H. Malter on cross-examination:

"Q Do you remember at that time telling me that you had him where he could not say a word because you had it in Coates' own handwriting where it showed what it cost to make alcohol and that he was engaged in the still business and that you had that memorandum and you were going to keep it?" Rep. Tr. pg. 928.

XXVII.

The said Court erred in sustaining the Government's objection to the question asked defendant's witness W. D. Coates:

"Q What was said at that time?" Rep. Tr. pg. 990, l. 18.

Before the objection was made, the witness partly answered the question, as follows:

"A We had gone up there, Mrs. Coates and I had gone up there to talk to Mr. McNabb in a general way on the subject of the case. And as we were about to leave the office I was nearest the door, Mr. Whitfield was nearest and there adjacent to me, was Mr. Davis."

The previous question was: "Have you talked with Mr. Whitfield?" he being the Prohibition Agent, to which the witness Coates had replied, "I did." The purpose of the question was to show that Mr. Whitfield told Mr. W. D. Coates that he believed that the defendant Coates started in a grape concentrate syrup deal in the beginning.

XVIII.

The said Court erred in denying the proffer of proof made by this defendant and appellant while defendant's witness N. Lindsay South was on the witness stand, as follows: Rep. Tr. pg. 1000.

"MR. SAVAGE: At this time, I offer to prove by this witness that Mr. Hugo Malter told this witness on Tuesday night, that the Government not only gave him the testimony but talked to him freely about it, both Mr. Davis and some of the other men in the office, and Mr. McNabb. That on Thursday night he came and told Mr. South substantially the same thing and that preparatory to going on the stand on Friday, Mr. Malter told Mr. South at that time that he had been kept up with the Government for a long time and that the testimony had not all been written up and that they called in the reporter and the reporter read the unwritten part of his testimony to Mr. Malter, and that again on Saturday night Mr. Malter came to Mr. South's house and told Mr. South substan-

tially the same thing, and that Mr. Malter also told Mr. South that Mr. Davis told Mr. Malter that he might be out of the conspiracy charge all right but it was a much more serious thing, that perjury was a much more serious thing, and he should be very careful how he testified."

XXIX.

The said Court erred in overruling the objection of this defendant and appellant to the question asked the witness J. L. Broad by the Government on cross-examination:

"Q Everybody knew it?" Rep. Tr. pg. 1007, line 16. and permitting the witness to answer:

"A Yes."

The witness was the Chief of Police of Fresno, and the question was whether everybody knew that Alexander Stumpf was a notorious criminal.

XXX.

The court erred in limiting the time for the argument of the case to the jury, on behalf of this defendant and appellant, to forty minutes. Rep. Tr. pg. 1014.

WHEREFORE, the said defendant and appellant, J. L. Coates, prays that the said judgment be reversed, and for such other and further relief as to the Circuit Court of Appeals may seem just and proper.

DATED: October 24, 1931.

H. A. Savage

N. Lindsay South

Attorneys for Defendant and Appellant J. L. Coates

[Endorsed]: Filed Oct 24, 1931 R. S. Zimmerman,
Clerk By Francis E. Cross Deputy Clerk

[TITLE OF COURT AND CAUSE.]

No. 1528-C.CR.

ORDER ALLOWING APPEAL WITH SUPERSEDEAS, AND FIXING BAIL.

The petition of J. L. COATES, one of the defendants in the above entitled cause, for an appeal from the final judgment therein, is hereby granted and the appeal is allowed;

And upon petitioner filing a bond for the sum of \$10,000. with sufficient sureties, and conditioned as required by law, the same shall operate as a supersedeas of the judgment made and entered in the above entitled cause, and shall suspend and stay all further proceedings in this Court until the determination of said appeal by the United States Circuit Court of Appeals for the Ninth Circuit.

It is further ORDERED, that the said J. L. Coates, defendant as aforesaid, shall be admitted to bail upon his entering into a good and sufficient bond in the sum of \$10,000. to be conditioned as required by law, with sureties to be approved by the Clerk of said District Court.

Dated: October 24, 1931.

Geo. Cosgrave,
District Judge

[Endorsed]: Filed Oct 24, 1931 R. S. Zimmerman,
Clerk By Francis E. Cross Deputy Clerk

[TITLE OF COURT AND CAUSE.]

No. 1528-C-CR

BOND ON APPEAL AND BAIL BOND.

KNOW ALL MEN BY THESE PRESENTS:

THAT, I, J. L. COATES, Principal, and E. Pearl Coates of the County of Fresno, State of California; and K. Arkalian, of the County of Madera, State of California, as sureties, are held and firmly bound unto the United States of America, in the full and just sum of Ten Thousand Dollars, to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of January in the year of our Lord, One Thousand Nine Hundred and Thirty-two (1932)

Whereas, lately on the 24th day of October, 1931, at a term of the United States District Court for the Southern District of California, Northern Division, holden at Fresno, California, in a cause pending in said Court between the United States of America, Plaintiff, against J. L. Coates, et al., Defendants, a judgment and sentence was rendered against said defendant J. L. Coatesin and said J. L. Coates obtained an Order from Hon. George Cosgrave, Judge of said District Court, permitting the said defendant J. L. Coates to appeal from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment and sentence in the aforesaid suit.

NOW, the condition of said obligation is such, that if the said defendant J. L. Coates shall appear in person in

the United States Circuit Court of Appeals for the Ninth Circuit when said cause is reached for argument, or when required by law or rule of said Circuit Court, and from day to day thereafter in said Court until said cause shall be finally disposed of, and shall abide by and obey the judgment and all orders made by the said Circuit Court in said cause, and shall surrender himself in execution of the judgment and sentence appealed from, as said Court may direct, and shall pay any fine or fines imposed upon him in said cause, if the judgment and sentence against him shall be affirmed; and if he shall appear for trial in the above entitled District Court on such day or days as may be appointed for a retrial by said District Court, and abide by and obey all orders of said Court, provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void; otherwise to remain in full force, virtue and effect.

Dated: January 21st, 1932.

J. L. Coates [Seal]

E. Pearl Coates [Seal]

K. Arakalian [Seal]

APPROVED:

Geo. Cosgrave

District Judge

Dated: January 22nd, 1932.

UNITED STATES OF AMERICA)
SOUTHERN DISTRICT OF CALIFORNIA) SS.

K. ARKELIAN, whose name is subscribed to the foregoing undertaking as one of the sureties thereof, being

first duly sworn, deposes and says: That I am a householder in said District and reside at Madera, California, in the County of Fresno, State of California, and my occupation is Rancher. That I am worth the sum of Ten Thousand and no/100 (\$10,000.00) Dollars, the sum in the said undertaking specified as the penalty thereof, over and above all my debts and liabilities, and exclusive of property exempt from execution, and that my property now standing of record in my name consists in part as follows:

Real Estate described as follows:

100 acres of vineyard—value Forty Thousand (\$40,000.00) Dollars clear—eighty-five per cent (85%) of stock of Arkelian, Inc., Seventy Thousand (\$70,000.00) Dollars savings account—Bank of America National Trust and Savings Bank.

That the encumbrances on the foregoing property are as follows:

That my total net assets, above all liabilities and obligations on other bonds, in the sum of One Million (\$1,000,000) Dollars. That I am.....surety upon one outstanding penal bonds (made within one year from date hereof) now in force, aggregating total penalty of Ten Thousand (\$10,000.00) Dollars.

K. Arakelian

Subscribed and sworn to before me this 21st day of January, 1932.

Samuel F. Hollins

U. S. Commissioner for the Southern District of
California, Northern Division

[Seal]

UNITED STATES OF AMERICA)
) SS.
SOUTHERN DISTRICT OF CALIFORNIA)

E. PEARL COATES, whose name is subscribed to the foregoing undertaking as one of the sureties thereof, being first duly sworn, deposes and says:

That I am a householder in said District and reside at Fresno, in the County of Fresno, State of California, and my occupation is housewife; that I am worth the sum of Ten Thousand and no/100 (\$10,000.00) Dollars, the sum in the said undertaking specified as the penalty thereof, over and above all my debts and liabilities and exclusive of property exempt from execution, in separate property, and that my property now standing of record in my name consists in part as follows:

Lot A and West 20 feet of Lot B of Alta Vista Tract
Fresno City, Fresno County, California, value \$25,000.00.

That the encumbrances on the foregoing property are as follows: Nine Thousand and no/100 (\$9,000.00) Dollars.

That my total net assets, above all liabilities and obligations on other bonds, is the sum of Thirty Thousand (\$30,000.00) Dollars. That I am not surety upon any outstanding penal bonds (made within one year from date hereof) now in force, aggregating total penalty of nothing.

E. Pearl Coates

3901 Huntington Boulevard, Fresno, Calif.

Subscribed and sworn to before me this 21st day of
January, 1932

Samuel F. Hollins

U. S. Commissioner for the Southern District of
California, Northern Division

[Seal]

I hereby certify to the sufficiency of the sureties on the foregoing bond. JAN 21 1932

Samuel F. Hollins

U. S. Commissioner for the Southern District
of California, Northern Division

The foregoing bond is hereby approved as to form.

P. V. Davis

Asst. United States Attorney.

The foregoing bond is hereby approved.

Geo. Cosgrave

United States District Judge.

[Endorsed]: Filed Jan 22 1932 R. S. Zimmerman,
Clerk By Theodore Hocke, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

No. 1528-C.CR.

STIPULATION ON FORM OF TRANSCRIPT,
AND ORDER THEREON.

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys of record, that in printing the transcript of the record on appeal herein the designation "Title of Court and Cause" may be used in lieu of the full title, and that the full endorsement of the Clerk filing pleadings, papers and other formal matters may be omitted and in lieu thereof a statement shall be made that the document is filed, date thereof, and signature of the Clerk. In each instance the pleading or docu-

ment so printed shall be identified by the number of this action in the trial court, to-wit, 1528-C-CR.

Dated: October 28, 1931.

SAMUEL W. McNABB,
United States Attorney,
By P. V. Davis
Assistant U. S. Atty
H. A. Savage
N. Lindsay South
Attorneys for Defendant and
Appellant J. L. COATES

SO ORDERED: Oct. 31, 1931.

Geo. Cosgrave
U. S. Judge

[Endorsed]: Filed Oct 31, 1931 R. S. Zimmerman,
Clerk By Francis E. Cross Deputy Clerk

[TITLE OF COURT AND CAUSE.]

No. 1528-C.CR.

PRAECIPE FOR TRANSCRIPT OF RECORD FOR
APPEAL

To the Clerk of the above entitled Court:

You will please prepare and certify a copy of papers filed and proceedings had in the above entitled cause, as are necessary to a determination of the appeal of this defendant and appellant by the Circuit Court of Appeals for the Ninth Circuit; said transcript to include Indictment, Plea, Verdict, Judgment, Petition for Appeal, Order Allowing Appeal, Bond on Appeal, Assignment of Errors

and Prayer for Reversal, Citation, Praecipe for Transcript, and Bill of Exceptions.

Dated: October 27, 1931.

H. A. SAVAGE

N. LINDSAY SOUTH

Attorneys for Defendant and
Appellant J. L. Coates

[Endorsed]: Filed Oct 28, 1931 R. S. Zimmerman,
Clerk By Francis E. Cross Deputy Clerk

[TITLE OF COURT AND CAUSE.]

No. 1528-C Cr.

To the Clerk of Said Court:

Sir:

Please issue transcript on the appeal of J. L. Coates and include therein the following:

1. Indictment
2. Minutes showing arraignment and plea.
3. Record of Trial.
4. Verdict of the Jury.
5. Motion for new trial and order denying same.
6. Motion in arrest of judgment, and order denying same.
7. Sentence and Judgment.
8. Notice of Appeal, Supersedeas, and Order Allowing Same.

9. Assignment of Errors.
10. Bill of Exceptions and Order Settling and Allowing Bill of Exceptions.
11. Citation on Appeal
12. Substitution of Attorneys
13. All Stipulations and Orders Extending Time to Propose, Amend or Settle Bill of Exceptions and Extending Term.
14. All Stipulations heretofore or hereafter filed, and Orders thereon relative to the printing as part of record exhibits introduced at trial.

DATED this day of January, 1931.

David E. Peckinpah

Atty for J. L. Coates.

[Endorsed]: Received copy of above this January 7, 1932 P. V. Davis Asst. U. S. Atty Filed Jan 7, 1932 R. S. Zimmerman, Clerk By Theodore Hocke Deputy Clerk

[TITLE OF COURT AND CAUSE.]

No. 1528-C

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 221 pages, numbered from 1 to 221 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; indictment, minutes of the court; verdict; sentence; bill of exceptions of J. L. Coates; stipulations and orders extending time; substitution of attorney; motion of new trial; petition for appeal; assignment of errors; order allowing appeal; bond on appeal and bail bond; stipulation on form of transcript and order thereon, and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Northern Division, this..... day of March in the year of Our Lord One Thousand Nine Hundred and Thirty-two, and of our Independence the One Hundred and Fifty-sixth.

R. S. ZIMMERMAN,

Clerk of the District Court of the
United States of America in and
for the Southern District of
California.

By

Deputy.

